

**(2) Satisfaction of reporting requirements**

If a registrant reports a suspicious order to the centralized database established under paragraph (1), the registrant shall be considered to have complied with the requirement under subsection (a)(3) to notify the Administrator of the Drug Enforcement Administration and the Special Agent in Charge of the Division Office of the Drug Enforcement Administration for the area in which the registrant is located or conducts business.

**(c) Sharing information with the States****(1) In general**

The Attorney General shall prepare and make available information regarding suspicious orders in a State, including information in the database established under subsection (b)(1), to the point of contact for purposes of administrative, civil, and criminal oversight relating to the diversion of controlled substances for the State, as designated by the Governor or chief executive officer of the State.

**(2) Timing**

The Attorney General shall provide information in accordance with paragraph (1) within a reasonable period of time after obtaining the information.

**(3) Coordination**

In establishing the process for the provision of information under this subsection, the Attorney General shall coordinate with States to ensure that the Attorney General has access to information, as permitted under State law, possessed by the States relating to prescriptions for controlled substances that will assist in enforcing Federal law.

(Pub. L. 91-513, title II, §312, as added Pub. L. 115-271, title III, §3292(b), Oct. 24, 2018, 132 Stat. 3956.)

**PART D—OFFENSES AND PENALTIES****§ 841. Prohibited acts A****(a) Unlawful acts**

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

**(b) Penalties**

Except as otherwise provided in section 849, 859, 860, or 861 of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving—

(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of—

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ec-

gonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 280 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

(vii) 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 1,000 or more marihuana plants regardless of weight; or

(viii) 50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$10,000,000 if the defendant is an individual or \$50,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment of not less than 15 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$20,000,000 if the defendant is an individual or \$75,000,000 if the defendant is other than an individual, or both. If any person commits a violation of this subparagraph or of section 849, 859, 860, or 861 of this title after 2 or more prior convictions for a serious drug felony or serious violent felony have become final, such person shall be sentenced to a term of imprisonment of not less than 25 years and fined in accordance with the preceding sentence. Notwithstanding section 3583 of title 18, any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to

such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(B) In the case of a violation of subsection (a) of this section involving—

(i) 100 grams or more of a mixture or substance containing a detectable amount of heroin;

(ii) 500 grams or more of a mixture or substance containing a detectable amount of—

(I) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(II) cocaine, its salts, optical and geometric isomers, and salts of isomers;

(III) ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(IV) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

(iii) 28 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

(iv) 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(v) 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(vi) 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

(vii) 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 100 or more marihuana plants regardless of weight; or

(viii) 5 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$5,000,000 if the defendant is an individual or \$25,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment which may not be

less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$8,000,000 if the defendant is an individual or \$50,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

(C) In the case of a controlled substance in schedule I or II, gamma hydroxybutyric acid (including when scheduled as an approved drug product for purposes of section 3(a)(1)(B) of the Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000), or 1 gram of flunitrazepam, except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$1,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$2,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.

(D) In the case of less than 50 kilograms of marihuana, except in the case of 50 or more marihuana plants regardless of weight, 10 kilograms

of hashish, or one kilogram of hashish oil, such person shall, except as provided in paragraphs (4) and (5) of this subsection, be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$500,000 if the defendant is an individual or \$2,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment.

(E)(i) Except as provided in subparagraphs (C) and (D), in the case of any controlled substance in schedule III, such person shall be sentenced to a term of imprisonment of not more than 10 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not more than 15 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$500,000 if the defendant is an individual or \$2,500,000 if the defendant is other than an individual, or both.

(ii) If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not more than 30 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$1,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, or both.

(iii) Any sentence imposing a term of imprisonment under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment.

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance

with the provisions of title 18 or \$500,000 if the defendant is an individual or \$2,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least one year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment.

(3) In the case of a controlled substance in schedule V, such person shall be sentenced to a term of imprisonment of not more than one year, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$100,000 if the defendant is an individual or \$250,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 4 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$200,000 if the defendant is an individual or \$500,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph may, if there was a prior conviction, impose a term of supervised release of not more than 1 year, in addition to such term of imprisonment.

(4) Notwithstanding paragraph (1)(D) of this subsection, any person who violates subsection (a) of this section by distributing a small amount of marihuana for no remuneration shall be treated as provided in section 844 of this title and section 3607 of title 18.

(5) Any person who violates subsection (a) of this section by cultivating or manufacturing a controlled substance on Federal property shall be imprisoned as provided in this subsection and shall be fined any amount not to exceed—

(A) the amount authorized in accordance with this section;

(B) the amount authorized in accordance with the provisions of title 18;

(C) \$500,000 if the defendant is an individual; or

(D) \$1,000,000 if the defendant is other than an individual;

or both.

(6) Any person who violates subsection (a), or attempts to do so, and knowingly or intentionally uses a poison, chemical, or other hazardous substance on Federal land, and, by such use—

(A) creates a serious hazard to humans, wildlife, or domestic animals,

(B) degrades or harms the environment or natural resources, or

(C) pollutes an aquifer, spring, stream, river, or body of water,

shall be fined in accordance with title 18 or imprisoned not more than five years, or both.

(7) PENALTIES FOR DISTRIBUTION.—

(A) IN GENERAL.—Whoever, with intent to commit a crime of violence, as defined in section 16 of title 18 (including rape), against an individual, violates subsection (a) by distrib-

uting a controlled substance or controlled substance analogue to that individual without that individual's knowledge, shall be imprisoned not more than 20 years and fined in accordance with title 18.

(B) DEFINITION.—For purposes of this paragraph, the term “without that individual's knowledge” means that the individual is unaware that a substance with the ability to alter that individual's ability to appraise conduct or to decline participation in or communicate unwillingness to participate in conduct is administered to the individual.

**(c) Offenses involving listed chemicals**

Any person who knowingly or intentionally—

(1) possesses a listed chemical with intent to manufacture a controlled substance except as authorized by this subchapter;

(2) possesses or distributes a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance except as authorized by this subchapter; or

(3) with the intent of causing the evasion of the recordkeeping or reporting requirements of section 830 of this title, or the regulations issued under that section, receives or distributes a reportable amount of any listed chemical in units small enough so that the making of records or filing of reports under that section is not required;

shall be fined in accordance with title 18 or imprisoned not more than 20 years in the case of a violation of paragraph (1) or (2) involving a list I chemical or not more than 10 years in the case of a violation of this subsection other than a violation of paragraph (1) or (2) involving a list I chemical, or both.

**(d) Boobytraps on Federal property; penalties; “boobytrap” defined**

(1) Any person who assembles, maintains, places, or causes to be placed a boobytrap on Federal property where a controlled substance is being manufactured, distributed, or dispensed shall be sentenced to a term of imprisonment for not more than 10 years or fined under title 18, or both.

(2) If any person commits such a violation after 1 or more prior convictions for an offense punishable under this subsection, such person shall be sentenced to a term of imprisonment of not more than 20 years or fined under title 18, or both.

(3) For the purposes of this subsection, the term “boobytrap” means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of any unsuspecting person making contact with the device. Such term includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, and lines or wires with hooks attached.

**(e) Ten-year injunction as additional penalty**

In addition to any other applicable penalty, any person convicted of a felony violation of this section relating to the receipt, distribution, manufacture, exportation, or importation of a listed chemical may be enjoined from engaging in any transaction involving a listed chemical for not more than ten years.

**(f) Wrongful distribution or possession of listed chemicals**

(1) Whoever knowingly distributes a listed chemical in violation of this subchapter (other than in violation of a recordkeeping or reporting requirement of section 830 of this title) shall, except to the extent that paragraph (12), (13), or (14) of section 842(a) of this title applies, be fined under title 18 or imprisoned not more than 5 years, or both.

(2) Whoever possesses any listed chemical, with knowledge that the recordkeeping or reporting requirements of section 830 of this title have not been adhered to, if, after such knowledge is acquired, such person does not take immediate steps to remedy the violation shall be fined under title 18 or imprisoned not more than one year, or both.

**(g) Internet sales of date rape drugs**

(1) Whoever knowingly uses the Internet to distribute a date rape drug to any person, knowing or with reasonable cause to believe that—

(A) the drug would be used in the commission of criminal sexual conduct; or

(B) the person is not an authorized purchaser;

shall be fined under this subchapter or imprisoned not more than 20 years, or both.

(2) As used in this subsection:

(A) The term “date rape drug” means—

(i) gamma hydroxybutyric acid (GHB) or any controlled substance analogue of GHB, including gamma butyrolactone (GBL) or 1,4-butanediol;

(ii) ketamine;

(iii) flunitrazepam; or

(iv) any substance which the Attorney General designates, pursuant to the rulemaking procedures prescribed by section 553 of title 5, to be used in committing rape or sexual assault.

The Attorney General is authorized to remove any substance from the list of date rape drugs pursuant to the same rulemaking authority.

(B) The term “authorized purchaser” means any of the following persons, provided such person has acquired the controlled substance in accordance with this chapter:

(i) A person with a valid prescription that is issued for a legitimate medical purpose in the usual course of professional practice that is based upon a qualifying medical relationship by a practitioner registered by the Attorney General. A “qualifying medical relationship” means a medical relationship that exists when the practitioner has conducted at least 1 medical evaluation with the authorized purchaser in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health<sup>1</sup> professionals. The preceding sentence shall not be construed to imply that 1 medical evaluation demonstrates that a prescription has been issued for a legitimate medical purpose within the usual course of professional practice.

(ii) Any practitioner or other registrant who is otherwise authorized by their reg-

<sup>1</sup> So in original. Probably should be “health”.

istration to dispense, procure, purchase, manufacture, transfer, distribute, import, or export the substance under this chapter.

(iii) A person or entity providing documentation that establishes the name, address, and business of the person or entity and which provides a legitimate purpose for using any “date rape drug” for which a prescription is not required.

(3) The Attorney General is authorized to promulgate regulations for record-keeping and reporting by persons handling 1,4-butanediol in order to implement and enforce the provisions of this section. Any record or report required by such regulations shall be considered a record or report required under this chapter.

**(h) Offenses involving dispensing of controlled substances by means of the Internet**

**(1) In general**

It shall be unlawful for any person to knowingly or intentionally—

(A) deliver, distribute, or dispense a controlled substance by means of the Internet, except as authorized by this subchapter; or

(B) aid or abet (as such terms are used in section 2 of title 18) any activity described in subparagraph (A) that is not authorized by this subchapter.

**(2) Examples**

Examples of activities that violate paragraph (1) include, but are not limited to, knowingly or intentionally—

(A) delivering, distributing, or dispensing a controlled substance by means of the Internet by an online pharmacy that is not validly registered with a modification authorizing such activity as required by section 823(f) of this title (unless exempt from such registration);

(B) writing a prescription for a controlled substance for the purpose of delivery, distribution, or dispensation by means of the Internet in violation of section 829(e) of this title;

(C) serving as an agent, intermediary, or other entity that causes the Internet to be used to bring together a buyer and seller to engage in the dispensing of a controlled substance in a manner not authorized by sections<sup>2</sup> 823(f) or 829(e) of this title;

(D) offering to fill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire; and

(E) making a material false, fictitious, or fraudulent statement or representation in a notification or declaration under subsection (d) or (e), respectively, of section 831 of this title.

**(3) Inapplicability**

(A) This subsection does not apply to—

(i) the delivery, distribution, or dispensation of controlled substances by non-practitioners to the extent authorized by their registration under this subchapter;

(ii) the placement on the Internet of material that merely advocates the use of a con-

trolled substance or includes pricing information without attempting to propose or facilitate an actual transaction involving a controlled substance; or

(iii) except as provided in subparagraph (B), any activity that is limited to—

(I) the provision of a telecommunications service, or of an Internet access service or Internet information location tool (as those terms are defined in section 231 of title 47); or

(II) the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication, without selection or alteration of the content of the communication, except that deletion of a particular communication or material made by another person in a manner consistent with section 230(c) of title 47 shall not constitute such selection or alteration of the content of the communication.

(B) The exceptions under subclauses (I) and (II) of subparagraph (A)(iii) shall not apply to a person acting in concert with a person who violates paragraph (1).

**(4) Knowing or intentional violation**

Any person who knowingly or intentionally violates this subsection shall be sentenced in accordance with subsection (b).

(Pub. L. 91-513, title II, §401, Oct. 27, 1970, 84 Stat. 1260; Pub. L. 95-633, title II, §201, Nov. 10, 1978, 92 Stat. 3774; Pub. L. 96-359, §8(c), Sept. 26, 1980, 94 Stat. 1194; Pub. L. 98-473, title II, §§224(a), 502, 503(b)(1), (2), Oct. 12, 1984, 98 Stat. 2030, 2068, 2070; Pub. L. 99-570, title I, §§1002, 1003(a), 1004(a), 1005(a), 1103, title XV, §15005, Oct. 27, 1986, 100 Stat. 3207-2, 3207-5, 3207-6, 3207-11, 3207-192; Pub. L. 100-690, title VI, §§6055, 6254(h), 6452(a), 6470(g), (h), 6479, Nov. 18, 1988, 102 Stat. 4318, 4367, 4371, 4378, 4381; Pub. L. 101-647, title X, §1002(e), title XII, §1202, title XXXV, §3599K, Nov. 29, 1990, 104 Stat. 4828, 4830, 4932; Pub. L. 103-322, title IX, §90105(a), (c), title XVIII, §180201(b)(2)(A), Sept. 13, 1994, 108 Stat. 1987, 1988, 2047; Pub. L. 104-237, title II, §206(a), title III, §302(a), Oct. 3, 1996, 110 Stat. 3103, 3105; Pub. L. 104-305, §2(a), (b)(1), Oct. 13, 1996, 110 Stat. 3807; Pub. L. 105-277, div. E, §2(a), Oct. 21, 1998, 112 Stat. 2681-759; Pub. L. 106-172, §§3(b)(1), 5(b), 9, Feb. 18, 2000, 114 Stat. 9, 10, 13; Pub. L. 107-273, div. B, title III, §3005(a), title IV, §4002(d)(2)(A), Nov. 2, 2002, 116 Stat. 1805, 1809; Pub. L. 109-177, title VII, §§711(f)(1)(B), 732, Mar. 9, 2006, 120 Stat. 262, 270; Pub. L. 109-248, title II, §201, July 27, 2006, 120 Stat. 611; Pub. L. 110-425, §3(e), (f), Oct. 15, 2008, 122 Stat. 4828, 4829; Pub. L. 111-220, §§2(a), 4(a), Aug. 3, 2010, 124 Stat. 2372; Pub. L. 115-391, title IV, §401(a)(2), Dec. 21, 2018, 132 Stat. 5220.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a), (b)(1), (c)(1), (2), (f)(1), (g)(1), and (h)(1), (3)(A)(i), was in the original “this title”, meaning title II of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1242, and is popularly known as the “Controlled Substances Act”. For complete classification of title II to the Code, see second paragraph of Short Title note set out under section 801 of this title and Tables.

<sup>2</sup> So in original. Probably should be “section”.

Schedules I, II, III, IV, and V, referred to in subsec. (b), are set out in section 812(c) of this title.

Section 3(a)(1)(B) of the Hillory J. Farias and Samantha Reid Date-Rape Prohibition Act of 2000, referred to in subsec. (b)(1)(C), is section 3(a)(1)(B) of Pub. L. 106-172, which is set out in a note under section 812 of this title.

This chapter, referred to in subsec. (g)(2)(B), (3), was in the original “this Act”, meaning Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1236. For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

#### AMENDMENTS

2018—Subsec. (b)(1)(A). Pub. L. 115-391, § 401(a)(2)(A), in concluding provisions, substituted “If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment of not less than 15 years” for “If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years” and “after 2 or more prior convictions for a serious drug felony or serious violent felony have become final, such person shall be sentenced to a term of imprisonment of not less than 25 years” for “after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release”.

Subsec. (b)(1)(B). Pub. L. 115-391, § 401(a)(2)(B), in concluding provisions, substituted “If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final” for “If any person commits such a violation after a prior conviction for a felony drug offense has become final”.

2010—Subsec. (b)(1)(A). Pub. L. 111-220, § 4(a)(1), in concluding provisions, substituted “\$10,000,000” for “\$4,000,000”, “\$50,000,000” for “\$10,000,000”, “\$20,000,000” for “\$8,000,000”, and “\$75,000,000” for “\$20,000,000”.

Subsec. (b)(1)(A)(iii). Pub. L. 111-220, § 2(a)(1), substituted “280 grams” for “50 grams”.

Subsec. (b)(1)(B). Pub. L. 111-220, § 4(a)(2), in concluding provisions, substituted “\$5,000,000” for “\$2,000,000”, “\$25,000,000” for “\$5,000,000”, “\$8,000,000” for “\$4,000,000”, and “\$50,000,000” for “\$10,000,000”.

Subsec. (b)(1)(B)(iii). Pub. L. 111-220, § 2(a)(2), substituted “28 grams” for “5 grams”.

2008—Subsec. (b)(1)(D). Pub. L. 110-425, § 3(e)(1)(A), struck out “or in the case of any controlled substance in schedule III (other than gamma hydroxybutyric acid), or 30 milligrams of flunitrazepam” after “hashish oil”.

Subsec. (b)(1)(E). Pub. L. 110-425, § 3(e)(1)(B), added subpar. (E).

Subsec. (b)(2). Pub. L. 110-425, § 3(e)(2), substituted “5 years” for “3 years”, “10 years” for “6 years”, and “after a prior conviction for a felony drug offense has become final,” for “after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final.”.

Subsec. (b)(3). Pub. L. 110-425, § 3(e)(3), substituted “4 years” for “2 years” and “after a prior conviction for a felony drug offense has become final,” for “after one or more convictions of him for an offense punishable under this paragraph, or for a crime under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final,” and inserted at end “Any sentence imposing a term of imprisonment under this paragraph may, if there was a prior conviction, impose a term of supervised release of not more than 1 year, in addition to such term of imprisonment.”.

Subsec. (h). Pub. L. 110-425, § 3(f), added subsec. (h).

2006—Subsec. (b)(5). Pub. L. 109-177, § 732, inserted “or manufacturing” after “cultivating” in introductory provisions.

Subsec. (f)(1). Pub. L. 109-177, § 711(f)(1)(B), inserted “, except to the extent that paragraph (12), (13), or (14) of section 842(a) of this title applies,” after “shall”.

Subsec. (g). Pub. L. 109-248 added subsec. (g).

2002—Subsec. (b)(1)(A), (B). Pub. L. 107-273, § 3005(a), substituted “Notwithstanding section 3583 of title 18, any sentence” for “Any sentence” in concluding provisions.

Subsec. (b)(1)(C), (D). Pub. L. 107-273, § 3005(a), substituted “Notwithstanding section 3583 of title 18, any sentence” for “Any sentence”.

Subsec. (d)(1). Pub. L. 107-273, § 4002(d)(2)(A)(i), substituted “or fined under title 18, or both” for “and shall be fined not more than \$10,000”.

Subsec. (d)(2). Pub. L. 107-273, § 4002(d)(2)(A)(ii), substituted “or fined under title 18, or both” for “and shall be fined not more than \$20,000”.

2000—Subsec. (b)(1)(C). Pub. L. 106-172, § 3(b)(1)(A), inserted “gamma hydroxybutyric acid (including when scheduled as an approved drug product for purposes of section 3(a)(1)(B) of the Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 2000),” after “schedule I or II,” in first sentence.

Subsec. (b)(1)(D). Pub. L. 106-172, § 3(b)(1)(B), substituted “(other than gamma hydroxybutyric acid), or 30” for “, or 30”.

Subsec. (b)(7)(A). Pub. L. 106-172, § 5(b), inserted “or controlled substance analogue” after “distributing a controlled substance”.

Subsecs. (c) to (g). Pub. L. 106-172, § 9, redesignated subsecs. (d) to (g) as (c) to (f), respectively.

1998—Subsec. (b)(1). Pub. L. 105-277 in subpar. (A)(viii) substituted “50 grams” and “500 grams” for “100 grams” and “1 kilogram”, respectively, and in subpar. (B)(viii) substituted “5 grams” and “50 grams” for “10 grams” and “100 grams”, respectively.

1996—Subsec. (b)(1)(C). Pub. L. 104-305, § 2(b)(1)(A), inserted “, or 1 gram of flunitrazepam,” after “schedule I or II”.

Subsec. (b)(1)(D). Pub. L. 104-305, § 2(b)(1)(B), inserted “or 30 milligrams of flunitrazepam,” after “schedule III,”.

Subsec. (b)(7). Pub. L. 104-305, § 2(a), added par. (7).

Subsec. (d). Pub. L. 104-237, § 302(a), in concluding provisions, substituted “not more than 20 years in the case of a violation of paragraph (1) or (2) involving a list I chemical or not more than 10 years in the case of a violation of this subsection other than a violation of paragraph (1) or (2) involving a list I chemical,” for “not more than 10 years,”.

Subsec. (f). Pub. L. 104-237, § 206(a), inserted “manufacture, exportation,” after “distribution,” and struck out “regulated” after “engaging in any”.

1994—Subsec. (b). Pub. L. 103-322, § 180201(b)(2)(A), inserted “849,” before “859,” in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 103-322, § 90105(c), 180201(b)(2)(A), in concluding provisions, inserted “849,” before “859,” and struck out “For purposes of this subparagraph, the term ‘felony drug offense’ means an offense that is a felony under any provision of this subchapter or any other Federal law that prohibits or restricts conduct relating to narcotic drugs, marihuana, or depressant or stimulant substances or a felony under any law of a State or a foreign country that prohibits or restricts conduct relating to narcotic drugs, marihuana, or depressant or stimulant substances.” before “Any sentence under this subparagraph”.

Subsec. (b)(1)(B). Pub. L. 103-322, § 90105(a), in sentence in concluding provisions beginning “If any person commits”, substituted “a prior conviction for a felony drug offense has become final” for “one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final”.

Subsec. (b)(1)(C). Pub. L. 103-322, §90105(a), in sentence beginning "If any person commits", substituted "a prior conviction for a felony drug offense has become final" for "one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final".

Subsec. (b)(1)(D). Pub. L. 103-322, §90105(a), in sentence beginning "If any person commits", substituted "a prior conviction for a felony drug offense has become final" for "one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final".

1990—Subsec. (b). Pub. L. 101-647, §1002(e)(1), substituted "section 859, 860, or 861" for "section 845, 845a, or 845b" in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 101-647, §1002(e)(1), substituted "section 859, 860, or 861" for "section 845, 845a, or 845b" in concluding provisions.

Subsec. (b)(1)(A)(ii)(IV). Pub. L. 101-647, §3599K, substituted "any of the substances" for "any of the substance".

Subsec. (b)(1)(A)(viii). Pub. L. 101-647, §1202, substituted "or 1 kilogram or more of a mixture or substance containing a detectable amount of methamphetamine" for "or 100 grams or more of a mixture or substance containing a detectable amount of methamphetamine".

Subsec. (b)(1)(B)(ii)(IV). Pub. L. 101-647, §3599K, substituted "any of the substances" for "any of the substance".

Subsec. (c). Pub. L. 101-647, §1002(e)(2), directed amendment of subsec. (c) by substituting "section 859, 860, or 861 of this title" for "section 845, 845a, or 845b of this title". Subsec. (c) was previously repealed by Pub. L. 98-473, §224(a)(2), as renumbered by Pub. L. 99-570, §1005(a), effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment. See 1984 Amendment note and Effective Date of 1984 Amendment note below.

1988—Subsec. (b)(1)(A). Pub. L. 100-690, §§6452(a), 6470(g), 6479(1), inserted "or 1,000 or more marihuana plants regardless of weight" in cl. (vii), added cl. (viii), substituted "a prior conviction for a felony drug offense has become final" for "one or more prior convictions for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final" in second sentence, and added provisions relating to sentencing for a person who violates this subpar. or section 485, 485a, or 485b of this title after two or more prior convictions for a felony drug offense have become final and defining "felony drug offense".

Subsec. (b)(1)(B). Pub. L. 100-690, §§6470(h), 6479(2), inserted "or 100 or more marihuana plants regardless of weight" in cl. (vii) and added cl. (viii).

Subsec. (b)(1)(D). Pub. L. 100-690, §6479(3), substituted "50 or more marihuana plants" for "100 or more marihuana plants".

Subsec. (b)(6). Pub. L. 100-690, §6254(h), added par. (6).

Subsec. (d). Pub. L. 100-690, §6055(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "Any person who knowingly or intentionally—

"(1) possesses any piperidine with intent to manufacture phencyclidine except as authorized by this subchapter, or

"(2) possesses any piperidine knowing, or having reasonable cause to believe, that the piperidine will be used to manufacture phencyclidine except as authorized by this subchapter,

shall be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual, or both."

Subsecs. (f), (g). Pub. L. 100-690, §6055(b), added subsecs. (f) and (g).

1986—Pub. L. 99-570, §1005(a), amended Pub. L. 98-473, §224(a). See 1984 Amendment note below.

Subsec. (b). Pub. L. 99-570, §1103(a), substituted "845a, or 845b" for "or 845a" in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 99-570, §1002(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "In the case of a violation of subsection (a) of this section involving—

"(i) 100 grams or more of a controlled substance in schedule I or II which is a mixture or substance containing a detectable amount of a narcotic drug other than a narcotic drug consisting of—

"(I) coca leaves;

"(II) a compound, manufacture, salt, derivative, or preparation of coca leaves; or

"(III) a substance chemically identical thereto;

"(ii) a kilogram or more of any other controlled substance in schedule I or II which is a narcotic drug;

"(iii) 500 grams or more of phencyclidine (PCP); or

"(iv) 5 grams or more of lysergic acid diethylamide (LSD);

such person shall be sentenced to a term of imprisonment of not more than 20 years, a fine of not more than \$250,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 40 years, a fine of not more than \$500,000, or both".

Subsec. (b)(1)(B). Pub. L. 99-570, §1002(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "In the case of a controlled substance in schedule I or II except as provided in subparagraphs (A) and (C), such person shall be sentenced to a term of imprisonment of not more than 15 years, a fine of not more than \$125,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years, a fine of not more than \$250,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment."

Subsec. (b)(1)(C). Pub. L. 99-570, §1002(2), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (b)(1)(D). Pub. L. 99-570, §1004(a), substituted "term of supervised release" for "special parole term" in two places.

Pub. L. 99-570, §§1002(1), 1003(a)(1), redesignated former subpar. (C) as (D), substituted "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual" for "a fine of not more than \$50,000" and "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$500,000 if the defendant is an individual or \$2,000,000 if the defendant is other than an individual" for "a fine

of not more than \$100,000", and inserted "except in the case of 100 or more marihuana plants regardless of weight,".

Subsec. (b)(2). Pub. L. 99-570, §1004(a), substituted "term of supervised release" for "special parole term" in two places.

Pub. L. 99-570, §1003(a)(2), substituted "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual" for "a fine of not more than \$25,000" and "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$500,000 if the defendant is an individual or \$2,000,000 if the defendant is other than an individual" for "a fine of not more than \$50,000".

Subsec. (b)(3). Pub. L. 99-570, §1003(a)(3), substituted "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$100,000 if the defendant is an individual or \$250,000 if the defendant is other than an individual" for "a fine of not more than \$10,000" and "a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18 or \$200,000 if the defendant is an individual or \$500,000 if the defendant is other than an individual" for "a fine of not more than \$20,000".

Subsec. (b)(4). Pub. L. 99-570, §1003(a)(4), which directed the substitution of "1(D)" for "1(C)" was executed by substituting "(1)(D)" for "(1)(C)" as the probable intent of Congress.

Subsec. (b)(5). Pub. L. 99-570, §1003(a)(5), amended par. (5) generally. Prior to amendment, par. (5) read as follows: "Notwithstanding paragraph (1), any person who violates subsection (a) of this section by cultivating a controlled substance on Federal property shall be fined not more than—

"(A) \$500,000 if such person is an individual; and

"(B) \$1,000,000 if such person is not an individual."

Subsec. (c). Pub. L. 99-570, §1004(a), substituted "term of supervised release" for "special parole term" whenever appearing, effective Nov. 1, 1987, the effective date of the repeal of subsec. (c) by Pub. L. 98-473, §224(a)(2). See 1984 Amendment note below.

Pub. L. 99-570, §1103(b), substituted " , 845a, or 845b" for "845a" in two places.

Subsec. (d). Pub. L. 99-570, §1003(a)(6), substituted "a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$250,000 if the defendant is an individual or \$1,000,000 if the defendant is other than an individual" for "a fine of not more than \$15,000".

Subsec. (e). Pub. L. 99-570, §15005, added subsec. (e).

1984—Subsec. (b). Pub. L. 98-473, §503(b)(1), inserted reference to section 845a of this title in provisions preceding par. (1)(A).

Pub. L. 98-473, §224(a)(1)–(3), (5), which directed amendment of this subsection effective Nov. 1, 1987 (see section 235(a)(1) of Pub. L. 98-473 set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure) was repealed by Pub. L. 99-570, §1005(a), and the remaining pars. (4) and (6) of Pub. L. 98-473, §224(a), were redesignated as pars. (1) and (2), respectively.

Subsec. (b)(1)(A). Pub. L. 98-473, §502(1)(A), added subpar. (A). Former subpar. (A) redesignated (B).

Subsec. (b)(1)(B). Pub. L. 98-473, §502(1)(A), (B), redesignated former subpar. (A) as (B), substituted "except as provided in subparagraphs (A) and (C)," for "which is a narcotic drug", "\$125,000" for "\$25,000", and "\$250,000" for "\$50,000", and inserted references to laws of a State and a foreign country. Former subpar. (B) redesignated (C).

Subsec. (b)(1)(C). Pub. L. 98-473, §502(1)(A), (C), redesignated former subpar. (B) as (C), substituted "less than 50 kilograms of marihuana, 10 kilograms of hashish, or one kilogram of hashish oil" for "a controlled substance in schedule I or II which is not a narcotic drug", "and (5)" for " , (5), and (6)", "\$50,000" for "\$15,000", and "\$100,000" for "\$30,000", and inserted references to laws of a State and a foreign country.

Subsec. (b)(2). Pub. L. 98-473, §502(2), substituted "\$25,000" for "\$10,000" and "\$50,000" for "\$20,000", and inserted references to laws of a State or of a foreign country.

Subsec. (b)(3). Pub. L. 98-473, §502(3), substituted "\$10,000" for "\$5,000" and "\$20,000" for "\$10,000", and inserted references to laws of a State or of a foreign country.

Subsec. (b)(4). Pub. L. 98-473, §502(4), substituted "(1)(C)" for "(1)(B)".

Pub. L. 98-473, §224(a)(1), as renumbered by Pub. L. 99-570, §1005(a), substituted "in section 844 of this title and section 3607 of title 18" for "in subsections (a) and (b) of section 844 of this title".

Subsec. (b)(5). Pub. L. 98-473, §502(5), (6), added par. (5) and struck out former par. (5) which related to penalties for manufacturing, etc., phencyclidine.

Subsec. (b)(6). Pub. L. 98-473, §502(5), struck out par. (6) which related to penalties for violations involving a quantity of marihuana exceeding 1,000 pounds.

Subsec. (c). Pub. L. 98-473, §224(a)(2), as renumbered by Pub. L. 99-570, §1005(a), struck out subsec. (c) which read as follows: "A special parole term imposed under this section or section 845, 845a, or 845b of this title may be revoked if its terms and conditions are violated. In such circumstances the original term of imprisonment shall be increased by the period of the special parole term and the resulting new term of imprisonment shall not be diminished by the time which was spent on special parole. A person whose special parole term has been revoked may be required to serve all or part of the remainder of the new term of imprisonment. A special parole term provided for in this section or section 845, 845a, or 845b of this title shall be in addition to, and not in lieu of, any other parole provided for by law."

Pub. L. 98-473, §503(b)(2), inserted reference to section 845a of this title in two places.

1980—Subsec. (b)(1)(B). Pub. L. 96-359, §8(c)(1), inserted reference to par. (6) of this subsection.

Subsec. (b)(6). Pub. L. 96-359, §8(c)(2), added par. (6).

1978—Subsec. (b)(1)(B). Pub. L. 95-633, §201(1), inserted " , except as provided in paragraphs (4) and (5) of this subsection," after "such person shall".

Subsec. (b)(5). Pub. L. 95-633, §201(2), added par. (5).

Subsec. (d). Pub. L. 95-633, §201(3), added subsec. (d).

#### EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-391 applicable to any offense that was committed before Dec. 21, 2018, if a sentence for the offense has not been imposed as of Dec. 21, 2018, see section 401(c) of Pub. L. 115-391, set out as a note under section 802 of this title.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-425 effective 180 days after Oct. 15, 2008, except as otherwise provided, see section 3(j) of Pub. L. 110-425, set out as a note under section 802 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 6055 of Pub. L. 100-690 effective 120 days after Nov. 18, 1988, see section 6061 of Pub. L. 100-690, set out as a note under section 802 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-570, title I, §1004(b), Oct. 27, 1986, 100 Stat. 3207-6, provided that: "The amendments made by this section [amending this section and sections 845, 845a, 960, and 962 of this title] shall take effect on the date of the taking effect of section 3583 of title 18, United States Code [Nov. 1, 1987]."

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 224(a) of Pub. L. 98-473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98-473, set out as an Effective Date note under section 802 of this title.



tive Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-633 effective Nov. 10, 1978, see section 203(a) of Pub. L. 95-633 set out as an Effective Date note under section 830 of this title.

#### EFFECTIVE DATE

Section effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91-513, set out as a note under section 801 of this title.

#### REPEALS

Pub. L. 96-359, §8(b), Sept. 26, 1980, 94 Stat. 1194, repealed section 203(d) of Pub. L. 95-633, which had provided for the repeal of subsec. (d) of this section effective Jan. 1, 1981.

#### APPLICATION OF FAIR SENTENCING ACT

Pub. L. 115-391, title IV, §404, Dec. 21, 2018, 132 Stat. 5222, provided that:

“(a) DEFINITION OF COVERED OFFENSE.—In this section, the term ‘covered offense’ means a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010 (Public Law 111-220; 124 Stat. 2372) [amending this section and sections 844 and 960 of this title], that was committed before August 3, 2010.

“(b) DEFENDANTS PREVIOUSLY SENTENCED.—A court that imposed a sentence for a covered offense may, on motion of the defendant, the Director of the Bureau of Prisons, the attorney for the Government, or the court, impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111-220; 124 Stat. 2372) were in effect at the time the covered offense was committed.

“(c) LIMITATIONS.—No court shall entertain a motion made under this section to reduce a sentence if the sentence was previously imposed or previously reduced in accordance with the amendments made by sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111-220; 124 Stat. 2372) or if a previous motion made under this section to reduce the sentence was, after the date of enactment of this Act [Dec. 21, 2018], denied after a complete review of the motion on the merits. Nothing in this section shall be construed to require a court to reduce any sentence pursuant to this section.”

### § 842. Prohibited acts B

#### (a) Unlawful acts

It shall be unlawful for any person—

(1) who is subject to the requirements of part C to distribute or dispense a controlled substance in violation of section 829 of this title;

(2) who is a registrant to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person or to manufacture a controlled substance not authorized by his registration;

(3) who is a registrant to distribute a controlled substance in violation of section 825 of this title;

(4) to remove, alter, or obliterate a symbol or label required by section 825 of this title;

(5) to refuse or negligently fail to make, keep, or furnish any record, report, notification, declaration, order or order form, statement, invoice, or information required under this subchapter or subchapter II;

(6) to refuse any entry into any premises or inspection authorized by this subchapter or subchapter II;

(7) to remove, break, injure, or deface a seal placed upon controlled substances pursuant to section 824(f) or 881 of this title or to remove or dispose of substances so placed under seal;

(8) to use, to his own advantage, or to reveal, other than to duly authorized officers or employees of the United States, or to the courts when relevant in any judicial proceeding under this subchapter or subchapter II, any information acquired in the course of an inspection authorized by this subchapter concerning any method or process which as a trade secret is entitled to protection, or to use to his own advantage or reveal (other than as authorized by section 830 of this title) any information that is confidential under such section;

(9) who is a regulated person to engage in a regulated transaction without obtaining the identification required by 830(a)(3) of this title.<sup>1</sup>

(10) negligently to fail to keep a record or make a report under section 830 of this title or negligently to fail to self-certify as required under section 830 of this title;

(11) to distribute a laboratory supply to a person who uses, or attempts to use, that laboratory supply to manufacture a controlled substance or a listed chemical, in violation of this subchapter or subchapter II, with reckless disregard for the illegal uses to which such a laboratory supply will be put;

(12) who is a regulated seller, or a distributor required to submit reports under subsection (b)(3) of section 830 of this title—

(A) to sell at retail a scheduled listed chemical product in violation of paragraph (1) of subsection (d) of such section, knowing at the time of the transaction involved (independent of consulting the logbook under subsection (e)(1)(A)(iii) of such section) that the transaction is a violation; or

(B) to knowingly or recklessly sell at retail such a product in violation of paragraph (2) of such subsection (d);

(13) who is a regulated seller to knowingly or recklessly sell at retail a scheduled listed chemical product in violation of subsection (e) of such section;

(14) who is a regulated seller or an employee or agent of such seller to disclose, in violation of regulations under subparagraph (C) of section 830(e)(1) of this title, information in logbooks under subparagraph (A)(iii) of such section, or to refuse to provide such a logbook to Federal, State, or local law enforcement authorities;

(15) to distribute a scheduled listed chemical product to a regulated seller, or to a regulated person referred to in section 830(b)(3)(B) of this title, unless such regulated seller or regulated person is, at the time of such distribution, currently registered with the Drug Enforcement Administration, or on the list of persons referred to under section 830(e)(1)(B)(v) of this title;

(16) to violate subsection (e) of section 825 of this title;<sup>2</sup> or

<sup>1</sup> So in original. Probably should be “section 830(a)(3) of this title.”

<sup>2</sup> See References in Text note below.

(17) in the case of a registered manufacturer or distributor of opioids, to fail to review the most recent information, directly related to the customers of the manufacturer or distributor, made available by the Attorney General in accordance with section 827(f) of this title.

As used in paragraph (11), the term “laboratory supply” means a listed chemical or any chemical, substance, or item on a special surveillance list published by the Attorney General, which contains chemicals, products, materials, or equipment used in the manufacture of controlled substances and listed chemicals. For purposes of paragraph (11), there is a rebuttable presumption of reckless disregard at trial if the Attorney General notifies a firm in writing that a laboratory supply sold by the firm, or any other person or firm, has been used by a customer of the notified firm, or distributed further by that customer, for the unlawful production of controlled substances or listed chemicals a firm distributes and 2 weeks or more after the notification the notified firm distributes a laboratory supply to the customer. For purposes of paragraph (15), if the distributor is temporarily unable to access the list of persons referred to under section 830(e)(1)(B)(v) of this title, the distributor may rely on a written, faxed, or electronic copy of a certificate of self-certification submitted by the regulated seller or regulated person, provided the distributor confirms within 7 business days of the distribution that such regulated seller or regulated person is on the list referred to under section 830(e)(1)(B)(v) of this title.

#### (b) Manufacture

It shall be unlawful for any person who is a registrant to manufacture a controlled substance in schedule I or II, or ephedrine, pseudoephedrine, or phenylpropanolamine or any of the salts, optical isomers, or salts of optical isomers of such chemical, which is—

(1) not expressly authorized by his registration and by a quota assigned to him pursuant to section 826 of this title; or

(2) in excess of a quota assigned to him pursuant to section 826 of this title.

#### (c) Penalties

(1)(A) Except as provided in subparagraph (B), (C), or (D) of this paragraph and paragraph (2), any person who violates this section shall, with respect to any such violation, be subject to a civil penalty of not more than \$25,000. The district courts of the United States (or, where there is no such court in the case of any territory or possession of the United States, then the court in such territory or possession having the jurisdiction of a district court of the United States in cases arising under the Constitution and laws of the United States) shall have jurisdiction in accordance with section 1355 of title 28 to enforce this paragraph.

(B)(i) Except as provided in clause (ii), in the case of a violation of paragraph (5), (10), or (17) of subsection (a), the civil penalty shall not exceed \$10,000.

(ii) In the case of a violation described in clause (i) committed by a registered manufacturer or distributor of opioids and related to the

reporting of suspicious orders for opioids, failing to maintain effective controls against diversion of opioids, or failing to review the most recent information made available by the Attorney General in accordance with section 827(f) of this title, the penalty shall not exceed \$100,000.

(C) In the case of a violation of paragraph (16) of subsection (a) of this section by an importer, exporter, manufacturer, or distributor (other than as provided in subparagraph (D)), up to \$500,000 per violation. For purposes of this subparagraph, a violation is defined as each instance of importation, exportation, manufacturing, distribution, or possession with intent to manufacture or distribute, in violation of paragraph (16) of subsection (a).

(D) In the case of a distribution, dispensing, or possession with intent to distribute or dispense in violation of paragraph (16) of subsection (a) of this section at the retail level, up to \$1000 per violation. For purposes of this paragraph, the term “at the retail level” refers to products sold, or held for sale, directly to the consumer for personal use. Each package, container or other separate unit containing an anabolic steroid that is distributed, dispensed, or possessed with intent to distribute or dispense at the retail level in violation of such paragraph (16) of subsection (a) shall be considered a separate violation.

(2)(A) If a violation of this section is prosecuted by an information or indictment which alleges that the violation was committed knowingly and the trier of fact specifically finds that the violation was so committed, such person shall, except as otherwise provided in subparagraph (B) or (D) of this paragraph, be sentenced to imprisonment of not more than one year or a fine under title 18, or both.

(B) If a violation referred to in subparagraph (A) was committed after one or more prior convictions of the offender for an offense punishable under this paragraph (2), or for a crime under any other provision of this subchapter or subchapter II or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 2 years, a fine under title 18, or both.

(C) In addition to the penalties set forth elsewhere in this subchapter or subchapter II, any business that violates paragraph (11) of subsection (a) shall, with respect to the first such violation, be subject to a civil penalty of not more than \$250,000, but shall not be subject to criminal penalties under this section, and shall, for any succeeding violation, be subject to a civil fine of not more than \$250,000 or double the last previously imposed penalty, whichever is greater.

(D) In the case of a violation described in subparagraph (A) that was a violation of paragraph (5), (10), or (17) of subsection (a) committed by a registered manufacturer or distributor of opioids that relates to the reporting of suspicious orders for opioids, failing to maintain effective controls against diversion of opioids, or failing to review the most recent information made available by the Attorney General in accordance with section 827(f) of this title, the

criminal fine under title 18 shall not exceed \$500,000.

(3) Except under the conditions specified in paragraph (2) of this subsection, a violation of this section does not constitute a crime, and a judgment for the United States and imposition of a civil penalty pursuant to paragraph (1) shall not give rise to any disability or legal disadvantage based on conviction for a criminal offense.

(4)(A) If a regulated seller, or a distributor required to submit reports under section 830(b)(3) of this title, violates paragraph (12) of subsection (a) of this section, or if a regulated seller violates paragraph (13) of such subsection, the Attorney General may by order prohibit such seller or distributor (as the case may be) from selling any scheduled listed chemical product. Any sale of such a product in violation of such an order is subject to the same penalties as apply under paragraph (2).

(B) An order under subparagraph (A) may be imposed only through the same procedures as apply under section 824(c) of this title for an order to show cause.

(Pub. L. 91-513, title II, § 402, Oct. 27, 1970, 84 Stat. 1262; Pub. L. 95-633, title II, § 202(b)(1), (2), Nov. 10, 1978, 92 Stat. 3776; Pub. L. 100-690, title VI, § 6056, Nov. 18, 1988, 102 Stat. 4318; Pub. L. 104-237, title II, § 205, Oct. 3, 1996, 110 Stat. 3103; Pub. L. 105-277, div. A, § 101(b) [title I, § 117], Oct. 21, 1998, 112 Stat. 2681-50, 2681-68; Pub. L. 107-273, div. B, title IV, § 4002(b)(16), (d)(2)(B), Nov. 2, 2002, 116 Stat. 1808, 1809; Pub. L. 109-177, title VII, §§ 711(f)(1)(A), (2), 714, Mar. 9, 2006, 120 Stat. 262-264; Pub. L. 111-268, §§ 4, 5, Oct. 12, 2010, 124 Stat. 2847, 2848; Pub. L. 113-260, § 3(c), Dec. 18, 2014, 128 Stat. 2931; Pub. L. 115-271, title III, § 3273(c), Oct. 24, 2018, 132 Stat. 3953.)

#### REFERENCES IN TEXT

Section 825 of this title, referred to in subsec. (a)(16), was so in the original, but probably should have been a reference to section 305 of Pub. L. 91-513, which is classified to section 825 of this title.

Schedules I and II, referred to in subsec. (b), are set out in section 812(c) of this title.

#### AMENDMENTS

2018—Subsec. (a)(17). Pub. L. 115-271, § 3273(c)(1), added par. (17).

Subsec. (c)(1)(B). Pub. L. 115-271, § 3273(c)(2)(A), added subpar. (B) and struck out former subpar. (B) which read as follows: “In the case of a violation of paragraph (5) or (10) of subsection (a), the civil penalty shall not exceed \$10,000.”

Subsec. (c)(2)(A). Pub. L. 115-271, § 3273(c)(2)(B)(i), inserted “or (D)” after “subparagraph (B)”.

Subsec. (c)(2)(D). Pub. L. 115-271, § 3273(c)(2)(B)(ii), added subpar. (D).

2014—Subsec. (a)(16). Pub. L. 113-260, § 3(c)(1), added par. (16).

Subsec. (c)(1)(A). Pub. L. 113-260, § 3(c)(2)(A), inserted “, (C), or (D)” after “subparagraph (B)”.

Subsec. (c)(1)(C), (D). Pub. L. 113-260, § 3(c)(2)(B), added subpars. (C) and (D).

2010—Subsec. (a). Pub. L. 111-268, § 4(4), inserted “For purposes of paragraph (15), if the distributor is temporarily unable to access the list of persons referred to under section 830(e)(1)(B)(v) of this title, the distributor may rely on a written, faxed, or electronic copy of a certificate of self-certification submitted by the regulated seller or regulated person, provided the distributor confirms within 7 business days of the distribution that such regulated seller or regulated person is on the

list referred to under section 830(e)(1)(B)(v) of this title.” at end of concluding provisions.

Subsec. (a)(10). Pub. L. 111-268, § 5, inserted “or negligently to fail to self-certify as required under section 830 of this title” before semicolon.

Subsec. (a)(15). Pub. L. 111-268, § 4(1)–(3), added par. (15).

2006—Subsec. (a)(12) to (14). Pub. L. 109-177, § 711(f)(1)(A), added pars. (12) to (14).

Subsec. (b). Pub. L. 109-177, § 714, inserted “, or ephedrine, pseudoephedrine, or phenylpropanolamine or any of the salts, optical isomers, or salts of optical isomers of such chemical,” after “manufacture a controlled substance in schedule I or II” in introductory provisions.

Subsec. (c)(4). Pub. L. 109-177, § 711(f)(2), added par. (4).

2002—Subsec. (c)(2)(A). Pub. L. 107-273, § 4002(d)(2)(B)(i), substituted “under title 18” for “of not more than \$25,000”.

Subsec. (c)(2)(B). Pub. L. 107-273, § 4002(d)(2)(B)(ii), substituted “under title 18” for “of \$50,000”.

Subsec. (c)(2)(C). Pub. L. 107-273, § 4002(b)(16), realigned margins.

1998—Subsec. (a)(5). Pub. L. 105-277, § 101(b) [title I, § 117(1)], inserted “negligently” before “fail”.

Subsec. (a)(10). Pub. L. 105-277, § 101(b) [title I, § 117(2)], inserted “negligently” before “to fail”.

Subsec. (c)(1). Pub. L. 105-277, § 101(b) [title I, § 117(3)], designated existing provisions as subpar. (A), inserted “subparagraph (B) of this paragraph and” before “paragraph (2)”, and added subpar. (B).

1996—Subsec. (a). Pub. L. 104-237, § 205(a), added par. (1) and closing provisions.

Subsec. (c)(2)(C). Pub. L. 104-237, § 205(b), added subpar. (C).

1988—Subsec. (a)(8). Pub. L. 100-690, § 6056(a), inserted “, or to use to his own advantage or reveal (other than as authorized by section 830 of this title) any information that is confidential under such section” after “protection”.

Subsec. (a)(9). Pub. L. 100-690, § 6056(b), amended par. (9) generally. Prior to amendment, par. (9) read as follows: “to distribute or sell piperidine in violation of regulations established under section 830(a)(2) of this title, respecting presentation of identification.”

Subsec. (a)(10). Pub. L. 100-690, § 6056(d), added par. (10).

Subsec. (c)(2)(C). Pub. L. 100-690, § 6056(c), struck out subpar. (C) which read as follows: “Subparagraphs (A) and (B) shall not apply to a violation of subsection (a)(5) of this section with respect to a refusal or failure to make a report required under section 830(a) of this title (relating to piperidine reporting).”

1978—Subsec. (a)(9). Pub. L. 95-633, § 202(b)(1), added par. (9).

Subsec. (c)(2)(C). Pub. L. 95-633, § 202(b)(2), added subpar. (C).

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-268 effective 180 days after Oct. 12, 2010, see section 6(a) of Pub. L. 111-268, set out as a note under section 830 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 effective 120 days after Nov. 18, 1988, see section 6061 of Pub. L. 100-690, set out as a note under section 802 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-633 effective Nov. 10, 1978, see section 203(a) of Pub. L. 95-633 set out as an Effective Date note under section 830 of this title.

#### EFFECTIVE DATE

Section effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91-513, set out as a note under section 801 of this title.

#### REPEALS

Pub. L. 96-359, § 8(b), Sept. 26, 1980, 94 Stat. 1194, repealed section 203(d) of Pub. L. 95-633, which had pro-

vided for the repeal of subsecs. (a)(9) and (c)(2)(C) of this section effective Jan. 1, 1981.

### § 843. Prohibited acts C

#### (a) Unlawful acts

It shall be unlawful for any person knowingly or intentionally—

(1) who is a registrant to distribute a controlled substance classified in schedule I or II, in the course of his legitimate business, except pursuant to an order or an order form as required by section 828 of this title;

(2) to use in the course of the manufacture, distribution, or dispensing of a controlled substance, or to use for the purpose of acquiring or obtaining a controlled substance, a registration number which is fictitious, revoked, suspended, expired, or issued to another person;

(3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

(4)(A) to furnish false or fraudulent material information in, or omit any material information from, any application, report, record, or other document required to be made, kept, or filed under this subchapter or subchapter II, or (B) to present false or fraudulent identification where the person is receiving or purchasing a listed chemical and the person is required to present identification under section 830(a) of this title;

(5) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit substance;

(6) to possess any three-neck round-bottom flask, tableting machine, encapsulating machine, or gelatin capsule, or any equipment, chemical, product, or material which may be used to manufacture a controlled substance or listed chemical, knowing, intending, or having reasonable cause to believe, that it will be used to manufacture a controlled substance or listed chemical in violation of this subchapter or subchapter II;

(7) to manufacture, distribute, export, or import any three-neck round-bottom flask, tableting machine, encapsulating machine, or gelatin capsule, or any equipment, chemical, product, or material which may be used to manufacture a controlled substance or listed chemical, knowing, intending, or having reasonable cause to believe, that it will be used to manufacture a controlled substance or listed chemical in violation of this subchapter or subchapter II or, in the case of an exportation, in violation of this subchapter or subchapter II or of the laws of the country to which it is exported;

(8) to create a chemical mixture for the purpose of evading a requirement of section 830 of this title or to receive a chemical mixture created for that purpose; or

(9) to distribute, import, or export a list I chemical without the registration required by this subchapter or subchapter II.

#### (b) Communication facility

It shall be unlawful for any person knowingly or intentionally to use any communication facility in committing or in causing or facilitating the commission of any act or acts constituting a felony under any provision of this subchapter or subchapter II. Each separate use of a communication facility shall be a separate offense under this subsection. For purposes of this subsection, the term “communication facility” means any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures, or sounds of all kinds and includes mail, telephone, wire, radio, and all other means of communication.

#### (c) Advertisement

(1) It shall be unlawful for any person to place in any newspaper, magazine, handbill, or other publications, any written advertisement knowing that it has the purpose of seeking or offering illegally to receive, buy, or distribute a Schedule<sup>1</sup> I controlled substance. As used in this section the term “advertisement” includes, in addition to its ordinary meaning, such advertisements as those for a catalog of Schedule<sup>1</sup> I controlled substances and any similar written advertisement that has the purpose of seeking or offering illegally to receive, buy, or distribute a Schedule<sup>1</sup> I controlled substance. The term “advertisement” does not include material which merely advocates the use of a similar material, which advocates a position or practice, and does not attempt to propose or facilitate an actual transaction in a Schedule<sup>1</sup> I controlled substance.

(2)(A) It shall be unlawful for any person to knowingly or intentionally use the Internet, or cause the Internet to be used, to advertise the sale of, or to offer to sell, distribute, or dispense, a controlled substance where such sale, distribution, or dispensing is not authorized by this subchapter or by the Controlled Substances Import and Export Act [21 U.S.C. 951 et seq.].

(B) Examples of activities that violate subparagraph (A) include, but are not limited to, knowingly or intentionally causing the placement on the Internet of an advertisement that refers to or directs prospective buyers to Internet sellers of controlled substances who are not registered with a modification under section 823(f) of this title.

(C) Subparagraph (A) does not apply to material that either—

(i) merely advertises the distribution of controlled substances by nonpractitioners to the extent authorized by their registration under this subchapter; or

(ii) merely advocates the use of a controlled substance or includes pricing information without attempting to facilitate an actual transaction involving a controlled substance.

#### (d) Penalties

(1) Except as provided in paragraph (2), any person who violates this section shall be sentenced to a term of imprisonment of not more than 4 years, a fine under title 18, or both; except that if any person commits such a violation

<sup>1</sup> So in original. Probably should not be capitalized.

after one or more prior convictions of him for violation of this section, or for a felony under any other provision of this subchapter or subchapter II or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 8 years, a fine under title 18, or both.

(2) Any person who, with the intent to manufacture or to facilitate the manufacture of methamphetamine, violates paragraph (6) or (7) of subsection (a), shall be sentenced to a term of imprisonment of not more than 10 years, a fine under title 18, or both; except that if any person commits such a violation after one or more prior convictions of that person—

(A) for a violation of paragraph (6) or (7) of subsection (a);

(B) for a felony under any other provision of this subchapter or subchapter II of this chapter;<sup>2</sup> or

(C) under any other law of the United States or any State relating to controlled substances or listed chemicals,

has become final, such person shall be sentenced to a term of imprisonment of not more than 20 years, a fine under title 18, or both.

#### (e) Additional penalties

In addition to any other applicable penalty, any person convicted of a felony violation of this section relating to the receipt, distribution, manufacture, exportation, or importation of a listed chemical may be enjoined from engaging in any transaction involving a listed chemical for not more than ten years.

#### (f) Injunctions

(1) In addition to any penalty provided in this section, the Attorney General is authorized to commence a civil action for appropriate declaratory or injunctive relief relating to violations of this section, section 842 of this title, or 856<sup>3</sup> of this title.

(2) Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business.

(3) Any order or judgment issued by the court pursuant to this subsection shall be tailored to restrain violations of this section or section 842 of this title.

(4) The court shall proceed as soon as practicable to the hearing and determination of such an action. An action under this subsection is governed by the Federal Rules of Civil Procedure except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.

(Pub. L. 91-513, title II, § 403, Oct. 27, 1970, 84 Stat. 1263; Pub. L. 95-633, title II, § 202(b)(3), Nov. 10, 1978, 92 Stat. 3776; Pub. L. 98-473, title II, § 516, Oct. 12, 1984, 98 Stat. 2074; Pub. L. 99-570, title I, § 1866(a), Oct. 27, 1986, 100 Stat. 3207-54; Pub. L. 100-690, title VI, § 6057, Nov. 18, 1988, 102 Stat. 4319; Pub. L. 103-200, § 3(g), Dec. 17, 1993, 107 Stat.

2337; Pub. L. 103-322, title IX, § 90106, Sept. 13, 1994, 108 Stat. 1988; Pub. L. 104-237, title II, §§ 203(a), 206(b), Oct. 3, 1996, 110 Stat. 3102, 3103; Pub. L. 107-273, div. B, title IV, § 4002(d)(2)(C), Nov. 2, 2002, 116 Stat. 1810; Pub. L. 108-21, title VI, § 608(d), Apr. 30, 2003, 117 Stat. 691; Pub. L. 110-425, § 3(g), Oct. 15, 2008, 122 Stat. 4830.)

#### REFERENCES IN TEXT

Schedules I and II, referred to in subsecs. (a)(1) and (c)(1), are set out in section 812(c) of this title.

This subchapter, referred to in subsec. (c)(2)(A), (C)(i), was in the original “this title”, meaning title II of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1242, and is popularly known as the “Controlled Substances Act”. For complete classification of title II to the Code, see second paragraph of Short Title note set out under section 801 of this title and Tables.

The Controlled Substances Import and Export Act, referred to in subsec. (c)(2)(A), is title III of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1285, which is classified principally to subchapter II (§ 951 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 951 of this title and Tables.

This subchapter or subchapter II of this chapter, referred to in subsec. (d)(2)(B), was in the original a reference to “this subchapter or subchapter II of this chapter” but probably should be a reference to “this title or title III of this Act”, meaning titles II and III, respectively, of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1242, 1285.

The Federal Rules of Civil Procedure, referred to in subsec. (f)(4), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Federal Rules of Criminal Procedure, referred to in subsec. (f)(4), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

#### AMENDMENTS

2008—Subsec. (c). Pub. L. 110-425 designated existing provisions as par. (1) and added par. (2).

2003—Subsec. (f)(1). Pub. L. 108-21 substituted “this section, section 842 of this title, or 856 of this title” for “this section or section 842 of this title”.

2002—Subsec. (d). Pub. L. 107-273 substituted “under title 18, or both;” for “of not more than \$30,000, or both;” in two places and “under title 18, or both.” for “of not more than \$60,000, or both.” in two places.

1996—Subsec. (d). Pub. L. 104-237, § 203(a), inserted par. (1) designation, substituted “Except as provided in paragraph (2), any person” for “Any person”, and added par. (2).

Subsec. (e). Pub. L. 104-237, § 206(b)(1), inserted “manufacture, exportation,” after “distribution,” and struck out “regulated” after “engaging in any”.

Subsec. (f). Pub. L. 104-237, § 206(b)(2), added subsec. (f).

1994—Subsecs. (c) to (e). Pub. L. 103-322 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1993—Subsec. (a)(6), (7). Pub. L. 103-200, § 3(g)(1), amended pars. (6) and (7) generally. Prior to amendment, pars. (6) and (7) read as follows:

“(6) to possess any three-neck round-bottom flask, tableting machine, encapsulating machine, gelatin capsule, or equipment specially designed or modified to manufacture a controlled substance, with intent to manufacture a controlled substance except as authorized by this subchapter;

“(7) to manufacture, distribute, or import any three-neck round-bottom flask, tableting machine, encapsulating machine, gelatin capsule, or equipment specially designed or modified to manufacture a controlled substance, knowing that it will be used to manufacture a controlled substance except as authorized by this subchapter; or”.

Subsec. (a)(9). Pub. L. 103-200, § 3(g)(2), (3), added par. (9).

<sup>2</sup> See References in Text note below.

<sup>3</sup> So in original. Probably should be preceded by “section”.

1988—Subsec. (a)(4)(B). Pub. L. 100-690, §6057(a)(1), substituted “a listed chemical” for “piperidine”.

Subsec. (a)(6) to (8). Pub. L. 100-690, §6057(a)(2)-(4), added pars. (6) to (8).

Subsec. (d). Pub. L. 100-690, §6057(b), added subsec. (d).

1986—Subsec. (a)(2). Pub. L. 99-570 substituted a semicolon for the period at end.

1984—Subsec. (a)(2). Pub. L. 98-473 added applicability to dispensing, acquiring, or obtaining a controlled substance, and applicability to an expired number.

1978—Subsec. (a)(4). Pub. L. 95-633, §202(b)(3), designated existing provisions as subpar. (A) and added subpar. (B).

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-425 effective 180 days after Oct. 15, 2008, except as otherwise provided, see section 3(j) of Pub. L. 110-425, set out as a note under section 802 of this title.

#### EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-200 effective on date that is 120 days after Dec. 17, 1993, see section 11 of Pub. L. 103-200, set out as a note under section 802 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-690 effective 120 days after Nov. 18, 1988, see section 6061 of Pub. L. 100-690, set out as a note under section 802 of this title.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-633 effective Nov. 10, 1978, except as otherwise provided, see section 203(a) of Pub. L. 95-633, set out as an Effective Date note under section 830 of this title.

#### EFFECTIVE DATE

Section effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91-513, set out as a note under section 801 of this title.

#### REPEALS

Pub. L. 96-359, §8(b), Sept. 26, 1980, 94 Stat. 1194, repealed section 203(d) of Pub. L. 95-633, which had provided for the repeal of subsec. (a)(4)(B) of this section effective Jan. 1, 1981.

### § 844. Penalties for simple possession

#### (a) Unlawful acts; penalties

It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this subchapter or subchapter II. It shall be unlawful for any person knowingly or intentionally to possess any list I chemical obtained pursuant to or under authority of a registration issued to that person under section 823 of this title or section 958 of this title if that registration has been revoked or suspended, if that registration has expired, or if the registrant has ceased to do business in the manner contemplated by his registration. It shall be unlawful for any person to knowingly or intentionally purchase at retail during a 30 day period more than 9 grams of ephedrine base, pseudoephedrine base, or phenylpropanolamine base in a scheduled listed chemical product, except that, of such 9 grams, not more than 7.5 grams may be imported by means of shipping through any private or commercial carrier or

the Postal Service. Any person who violates this subsection may be sentenced to a term of imprisonment of not more than 1 year, and shall be fined a minimum of \$1,000, or both, except that if he commits such offense after a prior conviction under this subchapter or subchapter II, or a prior conviction for any drug, narcotic, or chemical offense chargeable under the law of any State, has become final, he shall be sentenced to a term of imprisonment for not less than 15 days but not more than 2 years, and shall be fined a minimum of \$2,500, except, further, that if he commits such offense after two or more prior convictions under this subchapter or subchapter II, or two or more prior convictions for any drug, narcotic, or chemical offense chargeable under the law of any State, or a combination of two or more such offenses have become final, he shall be sentenced to a term of imprisonment for not less than 90 days but not more than 3 years, and shall be fined a minimum of \$5,000. Notwithstanding any penalty provided in this subsection, any person convicted under this subsection for the possession of flunitrazepam shall be imprisoned for not more than 3 years, shall be fined as otherwise provided in this section, or both. The imposition or execution of a minimum sentence required to be imposed under this subsection shall not be suspended or deferred. Further, upon conviction, a person who violates this subsection shall be fined the reasonable costs of the investigation and prosecution of the offense, including the costs of prosecution of an offense as defined in sections 1918 and 1920 of title 28, except that this sentence shall not apply and a fine under this section need not be imposed if the court determines under the provision of title 18 that the defendant lacks the ability to pay.

**(b) Repealed. Pub. L. 98-473, title II, §219(a), Oct. 12, 1984, 98 Stat. 2027**

#### (c) “Drug, narcotic, or chemical offense” defined

As used in this section, the term “drug, narcotic, or chemical offense” means any offense which proscribes the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell or transfer any substance the possession of which is prohibited under this subchapter.

(Pub. L. 91-513, title II, §404, Oct. 27, 1970, 84 Stat. 1264; Pub. L. 98-473, title II, §219, Oct. 12, 1984, 98 Stat. 2027; Pub. L. 99-570, title I, §1052, Oct. 27, 1986, 100 Stat. 3207-8; Pub. L. 100-690, title VI, §§6371, 6480, Nov. 18, 1988, 102 Stat. 4370, 4382; Pub. L. 101-647, title XII, §1201, title XIX, §1907, Nov. 29, 1990, 104 Stat. 4829, 4854; Pub. L. 104-237, title II, §201(a), Oct. 3, 1996, 110 Stat. 3101; Pub. L. 104-305, §2(c), Oct. 13, 1996, 110 Stat. 3808; Pub. L. 109-177, title VII, §711(e)(1), Mar. 9, 2006, 120 Stat. 262; Pub. L. 111-220, §3, Aug. 3, 2010, 124 Stat. 2372.)

#### AMENDMENTS

2010—Subsec. (a). Pub. L. 111-220 struck out “Notwithstanding the preceding sentence, a person convicted under this subsection for the possession of a mixture or substance which contains cocaine base shall be imprisoned not less than 5 years and not more than 20 years, and fined a minimum of \$1,000, if the conviction is a first conviction under this subsection and the

amount of the mixture or substance exceeds 5 grams, if the conviction is after a prior conviction for the possession of such a mixture or substance under this subsection becomes final and the amount of the mixture or substance exceeds 3 grams, or if the conviction is after 2 or more prior convictions for the possession of such a mixture or substance under this subsection become final and the amount of the mixture or substance exceeds 1 gram.” after “\$5,000.”

2006—Subsec. (a). Pub. L. 109-177 inserted after second sentence “It shall be unlawful for any person to knowingly or intentionally purchase at retail during a 30 day period more than 9 grams of ephedrine base, pseudoephedrine base, or phenylpropanolamine base in a scheduled listed chemical product, except that, of such 9 grams, not more than 7.5 grams may be imported by means of shipping through any private or commercial carrier or the Postal Service.”

1996—Subsec. (a). Pub. L. 104-305 inserted “Notwithstanding any penalty provided in this subsection, any person convicted under this subsection for the possession of flunitrazepam shall be imprisoned for not more than 3 years, shall be fined as otherwise provided in this section, or both.” after “mixture or substance exceeds 1 gram.”

Pub. L. 104-237, §201(a)(1), inserted after first sentence “It shall be unlawful for any person knowingly or intentionally to possess any list I chemical obtained pursuant to or under authority of a registration issued to that person under section 823 of this title or section 958 of this title if that registration has been revoked or suspended, if that registration has expired, or if the registrant has ceased to do business in the manner contemplated by his registration.” and substituted “drug, narcotic, or chemical” for “drug or narcotic” in two places.

Subsec. (c). Pub. L. 104-237, §201(a)(2), substituted “drug, narcotic, or chemical” for “drug or narcotic”.

1990—Subsec. (a). Pub. L. 101-647, §1907, inserted subsec. (a) designation.

Pub. L. 101-647, §1201, substituted “shall be imprisoned not less than 5 years and not more than 20 years, and fined a minimum of \$1,000” for “shall be fined under title 18 or imprisoned not less than 5 years and not more than 20 years, or both”.

1988—Subsec. (a). Pub. L. 100-690, §6480(1)(A)-(C), struck out “but not more than \$5,000” after “\$1,000”, “but not more than \$10,000” after “\$2,500”, and “but not more than \$25,000” after “\$5,000” in second sentence.

Pub. L. 100-690, §6371, inserted provisions relating to increased penalties in cases of certain serious crack possession offenses, making offenders subject to fines under title 18 or imprisonment to terms not less than 5 years nor more than 20 years, or both.

1986—Subsec. (a). Pub. L. 99-570 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or except as otherwise authorized by this subchapter or subchapter II of this chapter. Any person who violates this subsection shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than \$5,000, or both, except that if he commits such offense after a prior conviction or convictions under this subsection have become final, he shall be sentenced to a term of imprisonment of not more than 2 years, a fine of not more than \$10,000 or both.”

Subsec. (b). Pub. L. 99-570, in amending subsec. (b) generally, substituted “Upon the discharge of such person and dismissal of the proceedings” for “Upon the dismissal of such person and discharge of the proceedings” in par. (2).

Subsec. (c). Pub. L. 99-570, in amending section generally, added subsec. (c).

1984—Pub. L. 98-473 struck out subsec. (a) designation and struck out subsec. (b) which related to probation before judgment and expunging of records for first offense.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-177, title VII, §711(e)(2), Mar. 9, 2006, 120 Stat. 262, provided that: “The amendment made by paragraph (1) [amending this section] applies on and after the expiration of the 30-day period beginning on the date of the enactment of this Act [Mar. 9, 2006].”

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98-473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

#### EFFECTIVE DATE

Section effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91-513, set out as a note under section 801 of this title.

### §844a. Civil penalty for possession of small amounts of certain controlled substances

#### (a) In general

Any individual who knowingly possesses a controlled substance that is listed in section 841(b)(1)(A) of this title in violation of section 844 of this title in an amount that, as specified by regulation of the Attorney General, is a personal use amount shall be liable to the United States for a civil penalty in an amount not to exceed \$10,000 for each such violation.

#### (b) Income and net assets

The income and net assets of an individual shall not be relevant to the determination whether to assess a civil penalty under this section or to prosecute the individual criminally. However, in determining the amount of a penalty under this section, the income and net assets of an individual shall be considered.

#### (c) Prior conviction

A civil penalty may not be assessed under this section if the individual previously was convicted of a Federal or State offense relating to a controlled substance.

#### (d) Limitation on number of assessments

A civil penalty may not be assessed on an individual under this section on more than two separate occasions.

#### (e) Assessment

A civil penalty under this section may be assessed by the Attorney General only by an order made on the record after opportunity for a hearing in accordance with section 554 of title 5. The Attorney General shall provide written notice to the individual who is the subject of the proposed order informing the individual of the opportunity to receive such a hearing with respect to the proposed order. The hearing may be held only if the individual makes a request for the hearing before the expiration of the 30-day period beginning on the date such notice is issued.

#### (f) Compromise

The Attorney General may compromise, modify, or remit, with or without conditions, any civil penalty imposed under this section.

#### (g) Judicial review

If the Attorney General issues an order pursuant to subsection (e) after a hearing described in

such subsection, the individual who is the subject of the order may, before the expiration of the 30-day period beginning on the date the order is issued, bring a civil action in the appropriate district court of the United States. In such action, the law and the facts of the violation and the assessment of the civil penalty shall be determined de novo, and shall include the right of a trial by jury, the right to counsel, and the right to confront witnesses. The facts of the violation shall be proved beyond a reasonable doubt.

#### (h) Civil action

If an individual does not request a hearing pursuant to subsection (e) and the Attorney General issues an order pursuant to such subsection, or if an individual does not under subsection (g) seek judicial review of such an order, the Attorney General may commence a civil action in any appropriate district court of the United States for the purpose of recovering the amount assessed and an amount representing interest at a rate computed in accordance with section 1961 of title 28. Such interest shall accrue from the expiration of the 30-day period described in subsection (g). In such an action, the decision of the Attorney General to issue the order, and the amount of the penalty assessed by the Attorney General, shall not be subject to review.

#### (i) Limitation

The Attorney General may not under this subsection<sup>1</sup> commence proceeding against an individual after the expiration of the 5-year period beginning on the date on which the individual allegedly violated subsection (a).

#### (j) Expungement procedures

The Attorney General shall dismiss the proceedings under this section against an individual upon application of such individual at any time after the expiration of 3 years if—

- (1) the individual has not previously been assessed a civil penalty under this section;
- (2) the individual has paid the assessment;
- (3) the individual has complied with any conditions imposed by the Attorney General;
- (4) the individual has not been convicted of a Federal or State offense relating to a controlled substance; and
- (5) the individual agrees to submit to a drug test, and such test shows the individual to be drug free.

A nonpublic record of a disposition under this subsection shall be retained by the Department of Justice solely for the purpose of determining in any subsequent proceeding whether the person qualified for a civil penalty or expungement under this section. If a record is expunged under this subsection, an individual concerning whom such an expungement has been made shall not be held thereafter under any provision of law to be guilty of perjury, false swearing, or making a false statement by reason of his failure to recite or acknowledge a proceeding under this section or the results thereof in response to an inquiry made of him for any purpose.

<sup>1</sup> So in original. Probably should be "section".

(Pub. L. 91-513, title II, §405, formerly Pub. L. 100-690, title VI, §6486, Nov. 18, 1988, 102 Stat. 4384, renumbered §405 of Pub. L. 91-513, and amended Pub. L. 101-647, title X, §1002(g)(1), (2), Nov. 29, 1990, 104 Stat. 4828.)

#### PRIOR PROVISIONS

A prior section 405 of Pub. L. 91-513 was renumbered section 418 and is classified to section 859 of this title.

#### AMENDMENTS

1990—Subsec. (a). Pub. L. 101-647, §1002(g)(2)(A), made technical amendments to references to sections 841(b)(1)(A) and 844 of this title to correct references to corresponding provisions of original act.

Subsecs. (c), (j)(4). Pub. L. 101-647, §1002(g)(2)(B), (C), struck out "as defined in section 802 of this title" after "controlled substance".

#### §§ 845 to 845b. Transferred

#### CODIFICATION

Section 845, Pub. L. 91-513, title II, §405, Oct. 27, 1970, 84 Stat. 1265, as amended, which related to distribution of controlled substances to persons under age twenty-one, was renumbered §418 of Pub. L. 91-513 by Pub. L. 101-647, title X, §1002(a)(1), Nov. 29, 1990, 104 Stat. 4827, and transferred to section 859 of this title.

Section 845a, Pub. L. 91-513, title II, §405A, as added Pub. L. 98-473, title II, §503(a), Oct. 12, 1984, 98 Stat. 2069, and amended, which related to distribution or manufacturing of controlled substances in or near schools and colleges, was renumbered §419 of Pub. L. 91-513 by Pub. L. 101-647, title X, §1002(b), Nov. 29, 1990, 104 Stat. 4827, and transferred to section 860 of this title.

Section 845b, Pub. L. 91-513, title II, §405B, as added Pub. L. 99-570, title I, §1102, Oct. 27, 1986, 100 Stat. 3207-10, and amended, which related to employment or use of persons under 18 years of age in drug operations, was renumbered §420 of Pub. L. 91-513 by Pub. L. 101-647, title X, §1002(c), Nov. 29, 1990, 104 Stat. 4827, and transferred to section 861 of this title.

#### § 846. Attempt and conspiracy

Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

(Pub. L. 91-513, title II, §406, Oct. 27, 1970, 84 Stat. 1265; Pub. L. 100-690, title VI, §6470(a), Nov. 18, 1988, 102 Stat. 4377.)

#### AMENDMENTS

1988—Pub. L. 100-690 substituted "shall be subject to the same penalties as those prescribed for the offense" for "is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense".

#### EFFECTIVE DATE

Section effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91-513, set out as a note under section 801 of this title.

#### § 847. Additional penalties

Any penalty imposed for violation of this subchapter shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

(Pub. L. 91-513, title II, §407, Oct. 27, 1970, 84 Stat. 1265.)



## EFFECTIVE DATE

Section effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91-513, set out as a note under section 801 of this title.

**§ 848. Continuing criminal enterprise****(a) Penalties; forfeitures**

Any person who engages in a continuing criminal enterprise shall be sentenced to a term of imprisonment which may not be less than 20 years and which may be up to life imprisonment, to a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$2,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual, and to the forfeiture prescribed in section 853 of this title; except that if any person engages in such activity after one or more prior convictions of him under this section have become final, he shall be sentenced to a term of imprisonment which may not be less than 30 years and which may be up to life imprisonment, to a fine not to exceed the greater of twice the amount authorized in accordance with the provisions of title 18 or \$4,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual, and to the forfeiture prescribed in section 853 of this title.

**(b) Life imprisonment for engaging in continuing criminal enterprise**

Any person who engages in a continuing criminal enterprise shall be imprisoned for life and fined in accordance with subsection (a), if—

(1) such person is the principal administrator, organizer, or leader of the enterprise or is one of several such principal administrators, organizers, or leaders; and

(2)(A) the violation referred to in subsection (c)(1) involved at least 300 times the quantity of a substance described in subsection 841(b)(1)(B) of this title, or

(B) the enterprise, or any other enterprise in which the defendant was the principal or one of several principal administrators, organizers, or leaders, received \$10 million dollars in gross receipts during any twelve-month period of its existence for the manufacture, importation, or distribution of a substance described in section 841(b)(1)(B) of this title.

**(c) “Continuing criminal enterprise” defined**

For purposes of subsection (a), a person is engaged in a continuing criminal enterprise if—

(1) he violates any provision of this subchapter or subchapter II the punishment for which is a felony, and

(2) such violation is a part of a continuing series of violations of this subchapter or subchapter II—

(A) which are undertaken by such person in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management, and

(B) from which such person obtains substantial income or resources.

**(d) Suspension of sentence and probation prohibited**

In the case of any sentence imposed under this section, imposition or execution of such sen-

tence shall not be suspended, probation shall not be granted, and the Act of July 15, 1932 (D.C. Code, secs. 24-203—24-207), shall not apply.

**(e) Death penalty**

(1) In addition to the other penalties set forth in this section—

(A) any person engaging in or working in furtherance of a continuing criminal enterprise, or any person engaging in an offense punishable under section 841(b)(1)(A)<sup>1</sup> of this title or section 960(b)(1)<sup>1</sup> of this title who intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of an individual and such killing results, shall be sentenced to any term of imprisonment, which shall not be less than 20 years, and which may be up to life imprisonment, or may be sentenced to death; and

(B) any person, during the commission of, in furtherance of, or while attempting to avoid apprehension, prosecution or service of a prison sentence for, a felony violation of this subchapter or subchapter II who intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of any Federal, State, or local law enforcement officer engaged in, or on account of, the performance of such officer's official duties and such killing results, shall be sentenced to any term of imprisonment, which shall not be less than 20 years, and which may be up to life imprisonment, or may be sentenced to death.

(2) As used in paragraph (1)(B), the term “law enforcement officer” means a public servant authorized by law or by a Government agency or Congress to conduct or engage in the prevention, investigation, prosecution or adjudication of an offense, and includes those engaged in corrections, probation, or parole functions.

**(g)<sup>2</sup> to (p) Repealed. Pub. L. 109-177, title II, § 221(2), Mar. 9, 2006, 120 Stat. 231**

**(q) Repealed. Pub. L. 109-177, title II, §§ 221(4), 222(c), Mar. 9, 2006, 120 Stat. 231, 232**

**(r) Repealed. Pub. L. 109-177, title II, § 221(3), Mar. 9, 2006, 120 Stat. 231**

**(s) Special provision for methamphetamine**

For the purposes of subsection (b), in the case of continuing criminal enterprise involving methamphetamine or its salts, isomers, or salts of isomers, paragraph (2)(A) shall be applied by substituting “200” for “300”, and paragraph (2)(B) shall be applied by substituting “\$5,000,000” for “\$10 million dollars”.

(Pub. L. 91-513, title II, § 408, Oct. 27, 1970, 84 Stat. 1265; Pub. L. 98-473, title II, §§ 224(b), formerly § 224(c), 305, Oct. 12, 1984, 98 Stat. 2030, 2050; Pub. L. 99-570, title I, §§ 1005(b)(2), 1252, 1253, Oct. 27, 1986, 100 Stat. 3207-6, 3207-14; Pub. L. 100-690, title VI, § 6481, title VII, § 7001, Nov. 18, 1988, 102 Stat. 4382, 4387; Pub. L. 103-322, title XXXIII, §§ 330003(e), 330009(d), 330014, Sept. 13, 1994, 108 Stat. 2141, 2143, 2146; Pub. L. 104-132, title I, § 108, title IX, § 903(b), Apr. 24, 1996, 110

<sup>1</sup> See References in Text note below.

<sup>2</sup> So in original. Section does not contain a subsec. (f), see 1988 Amendment note below.

Stat. 1226, 1318; Pub. L. 109-177, title II, §§221, 222(c), title VII, §733, Mar. 9, 2006, 120 Stat. 231, 232, 270.)

#### REFERENCES IN TEXT

Section 841(b)(1)(A), referred to in subsec. (e)(1)(A), was in the original a reference to “section 841(b)(1)(A)” but probably should be a reference to “section 401(b)(1)(A)”, meaning section 401(b)(1)(A) of Pub. L. 91-513, title II, Oct. 27, 1970, 84 Stat. 1260.

Section 960(b)(1), referred to in subsec. (e)(1)(A), was in the original a reference to “section 960(b)(1)” but probably should be a reference to “section 1010(b)(1)”, meaning section 1010(b)(1) of Pub. L. 91-513, title III, Oct. 27, 1970, 84 Stat. 1290.

Act of July 15, 1932 (D.C. Code, secs. 24-203—24-207), referred to in subsec. (d), is act July 15, 1932, ch. 492, 47 Stat. 696, as amended, which is not classified to the Code.

#### AMENDMENTS

2006—Subsec. (e)(2). Pub. L. 109-177, §221(1), substituted “(1)(B)” for “(1)(b)”.

Subsecs. (g) to (p). Pub. L. 109-177, §221(2), struck out subsecs. (g) to (p) which related to hearing and sentencing procedures in death penalty cases and sentencing in capital cases in which the death penalty is not sought or imposed.

Subsec. (q). Pub. L. 109-177, §§221(4), 222(c), struck out subsec. (q) which related to appeal in capital cases and counsel for financially unable defendants.

Subsec. (r). Pub. L. 109-177, §221(3), struck out subsec. (r) which provided for refusal by State and Federal correctional employees to participate in executions.

Subsec. (s). Pub. L. 109-177, §733, added subsec. (s).

1996—Subsec. (q)(9). Pub. L. 104-132, §108, amended par. (9) generally. Prior to amendment, par. (9) read as follows: “Upon a finding in ex parte proceedings that investigative, expert or other services are reasonably necessary for the representation of the defendant, whether in connection with issues relating to guilt or sentence, the court shall authorize the defendant’s attorneys to obtain such services on behalf of the defendant and shall order the payment of fees and expenses therefore, under paragraph (10). Upon a finding that timely procurement of such services could not practicably await prior authorization, the court may authorize the provision of and payment for such services nunc pro tunc.”

Subsec. (q)(10). Pub. L. 104-132, §903(b), amended par. (10) generally. Prior to amendment, par. (10) read as follows: “Notwithstanding the rates and maximum limits generally applicable to criminal cases and any other provision of law to the contrary, the court shall fix the compensation to be paid to attorneys appointed under this subsection and the fees and expenses to be paid for investigative, expert, and other reasonably necessary services authorized under paragraph (9), at such rates or amounts as the court determines to be reasonably necessary to carry out the requirements of paragraphs (4) through (9).”

1994—Subsec. (b)(2)(A). Pub. L. 103-322, §330003(e), substituted “subsection (c)(1)” for “subsection (d)(1)”.

Subsec. (n)(11). Pub. L. 103-322, §330014, made technical amendment to reference to section 859 of this title to correct reference to corresponding section of original act.

Subsec. (q)(8). Pub. L. 103-322, §330009(d), substituted “applications for writ” for “applications, for writ”.

1988—Subsec. (a). Pub. L. 100-690, §6481(a), increased minimum term of imprisonment for first violations to 20 from 10 years and for subsequent violations to 30 from 20 years.

Subsecs. (c), (d). Pub. L. 100-690, §6481(b), redesignated subsecs. (d) and (e) as (c) and (d), respectively.

Subsec. (e). Pub. L. 100-690, §7001(a)(2), added subsec. (e). Former subsec. (e) redesignated (d).

Pub. L. 100-690, §7001(a)(1), which directed redesignation of former subsec. (e) as (f), could not be executed

because of prior redesignation of former subsec. (e) as (d) by Pub. L. 100-690, §6481(b), which resulted in there not being a subsec. (f).

Subsecs. (g) to (r). Pub. L. 100-690, §7001(b), added subsecs. (g) to (r).

1986—Subsec. (a). Pub. L. 99-570, §1252, substituted “to a fine not to exceed the greater of that authorized in accordance with the provisions of title 18 or \$2,000,000 if the defendant is an individual or \$5,000,000 if the defendant is other than an individual,” for “to a fine of not more than \$100,000,” and “to a fine not to exceed the greater of twice the amount authorized in accordance with the provisions of title 18 or \$4,000,000 if the defendant is an individual or \$10,000,000 if the defendant is other than an individual,” for “to a fine of not more than \$200,000.”

Subsecs. (b) to (e). Pub. L. 99-570, §1253, added subsec. (b) and redesignated former subsecs. (b) and (c) as (d) and (e), respectively, which resulted in there not being a subsec. (c).

1984—Subsec. (a). Pub. L. 98-473, §305, struck out par. (1) designation, substituted references to section 853 of this title for references to paragraph (2) in two places, and struck out par. (2) which related to forfeitures to the United States by any person convicted under par. (1).

Subsec. (d). Pub. L. 98-473, §305(b), struck out subsec. (d) relating to jurisdiction of courts of the United States.

Subsec. (e). Pub. L. 98-473, §224(b), as renumbered by Pub. L. 99-570, §1005(b)(2), which directed the amendment of subsec. (c) of this section by striking out “and section 4202 of title 18 of the United States Code”, was executed by striking out that language in subsec. (e) to reflect the probable intent of Congress and the intervening amendment by Pub. L. 99-570, §1253, which redesignated subsec. (c) as (e). See 1986 Amendment note above.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 903(b) of Pub. L. 104-132 effective as to cases commenced or appeals perfected on or after Apr. 24, 1996, see section 903(c) of Pub. L. 104-132, set out as a note under section 3006A of Title 18, Crimes and Criminal Procedure.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 224(b) of Pub. L. 98-473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98-473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

#### EFFECTIVE DATE

Section effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91-513, set out as a note under section 801 of this title.

#### GAO STUDY OF COST OF EXECUTIONS

Pub. L. 100-690, title VII, §7002, Nov. 18, 1988, 102 Stat. 4395, directed Comptroller General to conduct a study of cost of executions and report to Congress, prior to repeal by Pub. L. 104-66, title I, §1091(d), Dec. 21, 1995, 109 Stat. 722.

### § 849. Transportation safety offenses

#### (a) Definitions

In this section—

“safety rest area” means a roadside facility with parking facilities for the rest or other needs of motorists.

“truck stop” means a facility (including any parking lot appurtenant thereto) that—

(A) has the capacity to provide fuel or service, or both, to any commercial motor

vehicle (as defined in section 31301 of title 49), operating in commerce (as defined in that section); and

(B) is located within 2,500 feet of the National System of Interstate and Defense Highways or the Federal-Aid Primary System.

**(b) First offense**

A person who violates section 841(a)(1) of this title or section 856 of this title by distributing or possessing with intent to distribute a controlled substance in or on, or within 1,000 feet of, a truck stop or safety rest area is (except as provided in subsection (b))<sup>1</sup> subject to—

(1) twice the maximum punishment authorized by section 841(b) of this title; and

(2) twice any term of supervised release authorized by section 841(b) of this title for a first offense.

**(c) Subsequent offense**

A person who violates section 841(a)(1) of this title or section 856 of this title by distributing or possessing with intent to distribute a controlled substance in or on, or within 1,000 feet of, a truck stop or a safety rest area after a prior conviction or convictions under subsection (a)<sup>2</sup> have become final is subject to—

(1) 3 times the maximum punishment authorized by section 841(b) of this title; and

(2) 3 times any term of supervised release authorized by section 841(b) of this title for a first offense.

(Pub. L. 91-513, title II, § 409, as added Pub. L. 103-322, title XVIII, § 180201(b)(1), Sept. 13, 1994, 108 Stat. 2046.)

**PRIOR PROVISIONS**

A prior section 849, Pub. L. 91-513, title II, § 409, Oct. 27, 1970, 84 Stat. 1266; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, related to dangerous special drug offender sentencing, prior to repeal by Pub. L. 98-473, title II, §§ 219(a), 235(a)(1), Oct. 12, 1984, 98 Stat. 2027, 2031, eff. Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such repeal.

**§ 850. Information for sentencing**

Except as otherwise provided in this subchapter or section 242a(a)<sup>1</sup> of title 42, no limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence under this subchapter or subchapter II.

(Pub. L. 91-513, title II, § 410, Oct. 27, 1970, 84 Stat. 1269.)

**REFERENCES IN TEXT**

Section 242a of title 42, referred to in text, was repealed by Pub. L. 106-310, div. B, title XXXII, § 3201(b)(1), Oct. 17, 2000, 114 Stat. 1190.

**EFFECTIVE DATE**

Section effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91-513, set out as a note under section 801 of this title.

<sup>1</sup> So in original. Probably should refer to subsection (c).

<sup>2</sup> So in original. Probably should refer to subsection (b).

<sup>1</sup> See References in Text note below.

**§ 851. Proceedings to establish prior convictions**

**(a) Information filed by United States Attorney**

(1) No person who stands convicted of an offense under this part shall be sentenced to increased punishment by reason of one or more prior convictions, unless before trial, or before entry of a plea of guilty, the United States attorney files an information with the court (and serves a copy of such information on the person or counsel for the person) stating in writing the previous convictions to be relied upon. Upon a showing by the United States attorney that facts regarding prior convictions could not with due diligence be obtained prior to trial or before entry of a plea of guilty, the court may postpone the trial or the taking of the plea of guilty for a reasonable period for the purpose of obtaining such facts. Clerical mistakes in the information may be amended at any time prior to the pronouncement of sentence.

(2) An information may not be filed under this section if the increased punishment which may be imposed is imprisonment for a term in excess of three years unless the person either waived or was afforded prosecution by indictment for the offense for which such increased punishment may be imposed.

**(b) Affirmation or denial of previous conviction**

If the United States attorney files an information under this section, the court shall after conviction but before pronouncement of sentence inquire of the person with respect to whom the information was filed whether he affirms or denies that he has been previously convicted as alleged in the information, and shall inform him that any challenge to a prior conviction which is not made before sentence is imposed may not thereafter be raised to attack the sentence.

**(c) Denial; written response; hearing**

(1) If the person denies any allegation of the information of prior conviction, or claims that any conviction alleged is invalid, he shall file a written response to the information. A copy of the response shall be served upon the United States attorney. The court shall hold a hearing to determine any issues raised by the response which would except the person from increased punishment. The failure of the United States attorney to include in the information the complete criminal record of the person or any facts in addition to the convictions to be relied upon shall not constitute grounds for invalidating the notice given in the information required by subsection (a)(1). The hearing shall be before the court without a jury and either party may introduce evidence. Except as otherwise provided in paragraph (2) of this subsection, the United States attorney shall have the burden of proof beyond a reasonable doubt on any issue of fact. At the request of either party, the court shall enter findings of fact and conclusions of law.

(2) A person claiming that a conviction alleged in the information was obtained in violation of the Constitution of the United States shall set forth his claim, and the factual basis therefor, with particularity in his response to the information. The person shall have the burden of proof by a preponderance of the evidence on any

issue of fact raised by the response. Any challenge to a prior conviction, not raised by response to the information before an increased sentence is imposed in reliance thereon, shall be waived unless good cause be shown for failure to make a timely challenge.

**(d) Imposition of sentence**

(1) If the person files no response to the information, or if the court determines, after hearing, that the person is subject to increased punishment by reason of prior convictions, the court shall proceed to impose sentence upon him as provided by this part.

(2) If the court determines that the person has not been convicted as alleged in the information, that a conviction alleged in the information is invalid, or that the person is otherwise not subject to an increased sentence as a matter of law, the court shall, at the request of the United States attorney, postpone sentence to allow an appeal from that determination. If no such request is made, the court shall impose sentence as provided by this part. The person may appeal from an order postponing sentence as if sentence had been pronounced and a final judgment of conviction entered.

**(e) Statute of limitations**

No person who stands convicted of an offense under this part may challenge the validity of any prior conviction alleged under this section which occurred more than five years before the date of the information alleging such prior conviction.

(Pub. L. 91-513, title II, § 411, Oct. 27, 1970, 84 Stat. 1269.)

**EFFECTIVE DATE**

Section effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91-513, set out as a note under section 801 of this title.

**§ 852. Application of treaties and other international agreements**

Nothing in the Single Convention on Narcotic Drugs, the Convention on Psychotropic Substances, or other treaties or international agreements shall be construed to limit the provision of treatment, education, or rehabilitation as alternatives to conviction or criminal penalty for offenses involving any drug or other substance subject to control under any such treaty or agreement.

(Pub. L. 91-513, title II, § 412, as added Pub. L. 95-633, title I, § 107(a), Nov. 10, 1978, 92 Stat. 3773.)

**EFFECTIVE DATE**

Section effective on date the Convention on Psychotropic Substances enters into force in the United States [July 15, 1980], see section 112 of Pub. L. 95-633, set out as a note under section 801a of this title.

**§ 853. Criminal forfeitures**

**(a) Property subject to criminal forfeiture**

Any person convicted of a violation of this subchapter or subchapter II punishable by imprisonment for more than one year shall forfeit to the United States, irrespective of any provision of State law—

(1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;

(2) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation; and

(3) in the case of a person convicted of engaging in a continuing criminal enterprise in violation of section 848 of this title, the person shall forfeit, in addition to any property described in paragraph (1) or (2), any of his interest in, claims against, and property or contractual rights affording a source of control over, the continuing criminal enterprise.

The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to this subchapter or subchapter II, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this part, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

**(b) Meaning of term "property"**

Property subject to criminal forfeiture under this section includes—

(1) real property, including things growing on, affixed to, and found in land; and

(2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

**(c) Third party transfers**

All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (n) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

**(d) Rebuttable presumption**

There is a rebuttable presumption at trial that any property of a person convicted of a felony under this subchapter or subchapter II is subject to forfeiture under this section if the United States establishes by a preponderance of the evidence that—

(1) such property was acquired by such person during the period of the violation of this subchapter or subchapter II or within a reasonable time after such period; and

(2) there was no likely source for such property other than the violation of this subchapter or subchapter II.

**(e) Protective orders**

(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section—

(A) upon the filing of an indictment or information charging a violation of this subchapter or subchapter II for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered;

*Provided, however,* That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than fourteen days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(4) ORDER TO REPATRIATE AND DEPOSIT.—

(A) IN GENERAL.—Pursuant to its authority to enter a pretrial restraining order under this section, the court may order a defendant to repatriate any property that may be seized and forfeited, and to deposit that property pending trial in the registry of the court, or with the United States Marshals Service or the Secretary of the Treasury, in an interest-bearing account, if appropriate.

(B) FAILURE TO COMPLY.—Failure to comply with an order under this subsection, or an order to repatriate property under subsection (p), shall be punishable as a civil or criminal contempt of court, and may also result in an enhancement of the sentence of the defendant

under the obstruction of justice provision of the Federal Sentencing Guidelines.

#### (f) Warrant of seizure

The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (e) may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.

#### (g) Execution

Upon entry of an order of forfeiture under this section, the court shall authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to the property which are required by law, or which are necessary to protect the interests of the United States or third parties.

#### (h) Disposition of property

Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with him or on his behalf, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to him.

#### (i) Authority of the Attorney General

With respect to property ordered forfeited under this section, the Attorney General is authorized to—

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this subchapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;

(2) compromise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States, in accordance with the provisions of section 881(e) of this title, of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

**(j) Applicability of civil forfeiture provisions**

Except to the extent that they are inconsistent with the provisions of this section, the provisions of section 881(d) of this title shall apply to a criminal forfeiture under this section.

**(k) Bar on intervention**

Except as provided in subsection (n), no party claiming an interest in property subject to forfeiture under this section may—

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

**(l) Jurisdiction to enter orders**

The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

**(m) Depositions**

In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States, the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

**(n) Third party interests**

(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

**(o) Construction**

The provisions of this section shall be liberally construed to effectuate its remedial purposes.

**(p) Forfeiture of substitute property****(1) In general**

Paragraph (2) of this subsection shall apply, if any property described in subsection (a), as a result of any act or omission of the defendant—

(A) cannot be located upon the exercise of due diligence;

(B) has been transferred or sold to, or deposited with, a third party;

(C) has been placed beyond the jurisdiction of the court;

(D) has been substantially diminished in value; or

(E) has been commingled with other property which cannot be divided without difficulty.

**(2) Substitute property**

In any case described in any of subparagraphs (A) through (E) of paragraph (1), the court shall order the forfeiture of any other property of the defendant, up to the value of any property described in subparagraphs (A) through (E) of paragraph (1), as applicable.

**(3) Return of property to jurisdiction**

In the case of property described in paragraph (1)(C), the court may, in addition to any other action authorized by this subsection, order the defendant to return the property to the jurisdiction of the court so that the property may be seized and forfeited.

**(q) Restitution for cleanup of clandestine laboratory sites**

The court, when sentencing a defendant convicted of an offense under this subchapter or subchapter II involving the manufacture, the possession, or the possession with intent to distribute, of amphetamine or methamphetamine, shall—

(1) order restitution as provided in sections 3612 and 3664 of title 18;

(2) order the defendant to reimburse the United States, the State or local government concerned, or both the United States and the State or local government concerned for the costs incurred by the United States or the State or local government concerned, as the case may be, for the cleanup associated with the manufacture of amphetamine or methamphetamine by the defendant, or on premises or in property that the defendant owns, resides, or does business in; and

(3) order restitution to any person injured as a result of the offense as provided in section 3663A of title 18.

(Pub. L. 91-513, title II, §413, as added and amended Pub. L. 98-473, title II, §§303, 2301(d)–(f), Oct. 12, 1984, 98 Stat. 2044, 2192, 2193; Pub. L. 99-570, title I, §§1153(b), 1864, Oct. 27, 1986, 100 Stat. 3207-13, 3207-54; Pub. L. 104-237, title II, §207, Oct. 3, 1996, 110 Stat. 3104; Pub. L. 106-310, div. B, title XXXVI, §3613(a), Oct. 17, 2000, 114 Stat. 1229; Pub. L. 107-56, title III, §319(d), Oct. 26, 2001, 115 Stat. 314; Pub. L. 109-177, title VII, §743(a), Mar. 9, 2006, 120 Stat. 272; Pub. L. 111-16, §5, May 7, 2009, 123 Stat. 1608.)

**REFERENCES IN TEXT**

The Federal Rules of Evidence, referred to in subsec. (e)(3), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Federal Rules of Criminal Procedure, referred to in subsec. (m), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

**AMENDMENTS**

2009—Subsec. (e)(2). Pub. L. 111-16 substituted “fourteen days” for “ten days”.

2006—Subsec. (q). Pub. L. 109-177, §743(a)(1), inserted “, the possession, or the possession with intent to distribute,” after “manufacture” in introductory provisions.

Subsec. (q)(2). Pub. L. 109-177, §743(a)(2), inserted “, or on premises or in property that the defendant owns, resides, or does business in” after “by the defendant”.

2001—Subsec. (e)(4). Pub. L. 107-56, §319(d)(2), added par. (4).

Subsec. (p). Pub. L. 107-56, §319(d)(1), inserted heading and amended text of subsec. (p) generally. Prior to amendment, text read as follows: “If any of the property described in subsection (a) of this section, as a result of any act or omission of the defendant—

“(1) cannot be located upon the exercise of due diligence;

“(2) has been transferred or sold to, or deposited with, a third party;

“(3) has been placed beyond the jurisdiction of the court;

“(4) has been substantially diminished in value; or

“(5) has been commingled with other property

which cannot be divided without difficulty; the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).”

2000—Subsec. (q). Pub. L. 106-310, §3613(a)(1), (2), in introductory provisions, inserted “amphetamine or” before “methamphetamine” and substituted “shall” for “may”.

Subsec. (q)(2). Pub. L. 106-310, §3613(a)(2), (3), inserted “, the State or local government concerned, or both the United States and the State or local government concerned” after “to reimburse the United States”, “or the State or local government concerned, as the case may be,” after “costs incurred by the United States”, and “amphetamine or” before “methamphetamine”.

Subsec. (q)(3). Pub. L. 106-310, §3613(a)(4), substituted “section 3663A of title 18” for “section 3663 of title 18”.

1996—Subsec. (q). Pub. L. 104-237 added subsec. (q).

1986—Subsec. (c). Pub. L. 99-570, §1864(1), substituted

“subsection (n)” for “subsection (o)”.

Subsec. (f). Pub. L. 99-570, §1864(2), substituted “sub-

section (e)” for “subsection (f)”.

Subsec. (i)(1). Pub. L. 99-570, §1864(3), substituted

“this subchapter” for “this chapter”.

Subsec. (k). Pub. L. 99-570, §1864(1), (4), which directed the substitution of “subsection (n)” for “subsection (o)” in “the second subsection (h)”, and directed the redesignation of “the second subsection (h)” as subsection (k), were executed to this subsection because the “second subsection (h)” had been editorially redesignated subsec. (k) to reflect the probable intent of Congress. See 1984 Amendment note below.

Subsec. (p). Pub. L. 99-570, §1153(b), which directed that “section 413 of title II of the Comprehensive Drug Abuse Prevention and Control Act of 1975” be amended “by redesignating subsection ‘(p)’ as subsection ‘(q)’” and adding subsec. (p) was executed to this section, which is section 413 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as the probable intent of Congress, by adding a subsec. (p) in view of the prior redesignation of subsec. (p) as (o) by Pub. L. 98-473, §2301(e)(2). See 1984 Amendment note below.

1984—Subsec. (a). Pub. L. 98-473, §2301(d), inserted “In lieu of a fine otherwise authorized by this part, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.”

Subsec. (d). Pub. L. 98-473, §2301(e), struck out subsec. (d) which related to forfeiture of property other than that described in subsec. (a) and the conditions therefor, and redesignated former subsec. (e) as (d).

Subsecs. (e) to (p). Pub. L. 98-473, §2301(e)(2), which directed that this section be amended by redesignating subsecs. (e), (f), (g), (h), (i), (l), (m), (n), (o), and (p) as subsecs. (d), (e), (f), (g), (h), (i), (j), (h), (l), (m), (n), and (o), respectively, was executed by redesignating subsecs. (e) to (p) as (d) to (o), respectively, to give effect to the probable intent of Congress.

Subsec. (n)(1). Pub. L. 98-473, §2301(f), struck out “for at least seven successive court days” after “to dispose of the property”.

#### EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-16 effective Dec. 1, 2009, see section 7 of Pub. L. 111-16, set out as a note under section 109 of Title 11, Bankruptcy.

#### SAVINGS CLAUSE

Pub. L. 109-177, title VII, §743(b), Mar. 9, 2006, 120 Stat. 273, provided that: “Nothing in this section [amending this section] shall be interpreted or construed to amend, alter, or otherwise affect the obligations, liabilities and other responsibilities of any person under any Federal or State environmental laws.”

### § 853a. Transferred

#### CODIFICATION

Section, Pub. L. 100-690, title V, §5301, Nov. 18, 1988, 102 Stat. 4310, which related to denial of Federal benefits to drug traffickers and possessors, was renumbered section 421 of the Controlled Substances Act by Pub. L. 101-647, title X, §1002(d)(1), Nov. 29, 1990, 104 Stat. 4827, and is classified to section 862 of this title.

### § 854. Investment of illicit drug profits

#### (a) Prohibition

It shall be unlawful for any person who has received any income derived, directly or indirectly, from a violation of this subchapter or subchapter II punishable by imprisonment for more than one year in which such person has participated as a principal within the meaning of section 2 of title 18, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this section if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any violation of this subchapter or subchapter II after such purchase do not amount in the aggregate to 1 per centum of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

#### (b) Penalty

Whoever violates this section shall be fined not more than \$50,000 or imprisoned not more than ten years, or both.

#### (c) “Enterprise” defined

As used in this section, the term “enterprise” includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.

### (d) Construction

The provisions of this section shall be liberally construed to effectuate its remedial purposes.

(Pub. L. 91-513, title II, §414, as added Pub. L. 98-473, title II, §303, Oct. 12, 1984, 98 Stat. 2049.)

### § 855. Alternative fine

In lieu of a fine otherwise authorized by this part, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(Pub. L. 91-513, title II, §415, as added Pub. L. 98-473, title II, §2302, Oct. 12, 1984, 98 Stat. 2193.)

### § 856. Maintaining drug-involved premises

#### (a) Unlawful acts

Except as authorized by this subchapter, it shall be unlawful to—

(1) knowingly open, lease, rent, use, or maintain any place, whether permanently or temporarily, for the purpose of manufacturing, distributing, or using any controlled substance;

(2) manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant, or mortgagee, and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.

#### (b) Criminal penalties

Any person who violates subsection (a) of this section shall be sentenced to a term of imprisonment of not more than 20 years or a fine of not more than \$500,000, or both, or a fine of \$2,000,000 for a person other than an individual.

#### (c) Violation as offense against property

A violation of subsection (a) shall be considered an offense against property for purposes of section 3663A(c)(1)(A)(ii) of title 18.

#### (d) Civil penalties

(1) Any person who violates subsection (a) shall be subject to a civil penalty of not more than the greater of—

(A) \$250,000; or

(B) 2 times the gross receipts, either known or estimated, that were derived from each violation that is attributable to the person.

(2) If a civil penalty is calculated under paragraph (1)(B), and there is more than 1 defendant, the court may apportion the penalty between multiple violators, but each violator shall be jointly and severally liable for the civil penalty under this subsection.

#### (e) Declaratory and injunctive remedies

Any person who violates subsection (a) shall be subject to declaratory and injunctive remedies as set forth in section 843(f) of this title.

(Pub. L. 91-513, title II, §416, as added Pub. L. 99-570, title I, §1841(a), Oct. 27, 1986, 100 Stat. 3207-52; amended Pub. L. 106-310, div. B, title XXXVI, §3613(e), Oct. 17, 2000, 114 Stat. 1230; Pub.



L. 108-21, title VI, § 608(b)(1), (2), (c), Apr. 30, 2003, 117 Stat. 691.)

#### AMENDMENTS

2003—Pub. L. 108-21, § 608(b)(2), substituted “Maintaining drug-involved premises” for “Establishment of manufacturing operations” in section catchline.

Subsec. (a)(1). Pub. L. 108-21, § 608(b)(1)(A), substituted “open, lease, rent, use, or maintain any place, whether permanently or temporarily,” for “open or maintain any place”.

Subsec. (a)(2). Pub. L. 108-21, § 608(b)(1)(B), added par. (2) and struck out former par. (2) which read as follows: “manage or control any building, room, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, and knowingly and intentionally rent, lease, or make available for use, with or without compensation, the building, room, or enclosure for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.”

Subsecs. (d), (e). Pub. L. 108-21, § 608(c), added subsecs. (d) and (e).

2000—Subsec. (c). Pub. L. 106-310 added subsec. (c).

#### § 857. Repealed. Pub. L. 101-647, title XXIV, § 2401(d), Nov. 29, 1990, 104 Stat. 4859

Section, Pub. L. 99-570, title I, § 1822, Oct. 27, 1986, 100 Stat. 3207-51; Pub. L. 100-690, title VI, § 6485, Nov. 18, 1988, 102 Stat. 4384; Pub. L. 101-647, title XXIV, § 2401(b), Nov. 29, 1990, 104 Stat. 4859, related to interstate and foreign sale and transportation of drug paraphernalia.

Subsec. (a), which related to unlawful acts, was repealed.

Subsecs. (b) to (f) were redesignated as subsecs. (b) to (f) of section 422 of the Controlled Substances Act by section 2401(b) of Pub. L. 101-647 and transferred to section 863(b) to (f) of this title.

#### EFFECTIVE DATE

Pub. L. 99-570, title I, § 1823, Oct. 27, 1986, 100 Stat. 3207-52, which provided that subtitle O (§§ 1821-1823) of title I of Pub. L. 99-570, enacting this section and provisions set out as a note under section 801 of this title, was to become effective 90 days after Oct. 27, 1986, was repealed by Pub. L. 101-647, title XXIV, § 2401(d), Nov. 29, 1990, 104 Stat. 4859.

#### § 858. Endangering human life while illegally manufacturing controlled substance

Whoever, while manufacturing a controlled substance in violation of this subchapter, or attempting to do so, or transporting or causing to be transported materials, including chemicals, to do so, creates a substantial risk of harm to human life shall be fined in accordance with title 18 or imprisoned not more than 10 years, or both.

(Pub. L. 91-513, title II, § 417, as added Pub. L. 100-690, title VI, § 6301(a), Nov. 18, 1988, 102 Stat. 4370.)

#### § 859. Distribution to persons under age twenty-one

##### (a) First offense

Except as provided in section 860 of this title, any person at least eighteen years of age who violates section 841(a)(1) of this title by distributing a controlled substance to a person under twenty-one years of age is (except as provided in subsection (b)) subject to (1) twice the maximum punishment authorized by section 841(b) of this title, and (2) at least twice any term of supervised release authorized by section 841(b) of this

title, for a first offense involving the same controlled substance and schedule. Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a term of imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this subsection shall not apply to offenses involving 5 grams or less of marihuana.

##### (b) Second offense

Except as provided in section 860 of this title, any person at least eighteen years of age who violates section 841(a)(1) of this title by distributing a controlled substance to a person under twenty-one years of age after a prior conviction under subsection (a) of this section (or under section 333(b) of this title as in effect prior to May 1, 1971) has become final, is subject to (1) three times the maximum punishment authorized by section 841(b) of this title, and (2) at least three times any term of supervised release authorized by section 841(b) of this title, for a second or subsequent offense involving the same controlled substance and schedule. Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a term of imprisonment under this subsection shall be not less than one year. Penalties for third and subsequent convictions shall be governed by section 841(b)(1)(A) of this title.

(Pub. L. 91-513, title II, § 418, formerly § 405, Oct. 27, 1970, 84 Stat. 1265; Pub. L. 98-473, title II, §§ 224(b), 503(b)(3), Oct. 12, 1984, 98 Stat. 2030, 2070; Pub. L. 99-570, title I, §§ 1004(a), 1005(b)(1), 1105(a), (b), Oct. 27, 1986, 100 Stat. 3207-6, 3207-11; Pub. L. 100-690, title VI, §§ 6452(b), 6455, 6456, Nov. 18, 1988, 102 Stat. 4371, 4372; renumbered § 418 and amended Pub. L. 101-647, title X, §§ 1002(a), 1003(a), title XXXV, § 3599L, Nov. 29, 1990, 104 Stat. 4827, 4828, 4932.)

#### CODIFICATION

Section was classified to section 845 of this title prior to renumbering by Pub. L. 101-647.

#### AMENDMENTS

1990—Subsec. (a). Pub. L. 101-647, § 1003(a)(1), substituted “subject to (1) twice the maximum punishment authorized by section 841(b) of this title” for “punishable by (1) a term of imprisonment, or a fine, or both, up to twice that authorized by section 841(b) of this title”.

Pub. L. 101-647, § 1002(a)(2)(A), substituted “section 860” for “section 845a”.

Subsec. (b). Pub. L. 101-647, § 3599L, substituted “has become final” for “have become final”.

Pub. L. 101-647, § 1003(a)(2), substituted “subject to (1) three times the maximum punishment authorized by section 841(b) of this title” for “punishable by (1) a term of imprisonment, or a fine, or both, up to three times that authorized by section 841(b) of this title”.

Pub. L. 101-647, § 1002(a)(2)(B), substituted “section 860” for “section 845a”.

1988—Subsec. (a). Pub. L. 100-690, § 6455, inserted at end “The mandatory minimum sentencing provisions of this subsection shall not apply to offenses involving 5 grams or less of marihuana.”

Subsec. (b). Pub. L. 100-690, § 6452(b), struck out “or subsequent” after “Second” in heading, and in text struck out “or convictions” after “a prior conviction”, and inserted at end “Penalties for third and subsequent convictions shall be governed by section 841(b)(1)(A) of this title.”

Pub. L. 100-690, §6456, struck out “The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana.”

1986—Subsec. (a). Pub. L. 99-570, §1105(a), inserted “Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a term of imprisonment under this subsection shall be not less than one year.”

Pub. L. 99-570, §1004(a), substituted “term of supervised release” for “special parole term”.

Subsec. (b). Pub. L. 99-570, §1105(b), inserted “Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a term of imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana.”

Pub. L. 99-570, §1004(a), substituted “term of supervised release” for “special parole term”.

1984—Subsecs. (a), (b). Pub. L. 98-473, §503(b)(3), substituted “Except as provided in section 845a of this title, any” for “Any”.

Pub. L. 98-473, §224(b), which directed amendment of this section effective Nov. 1, 1987 (see section 235(a)(1) of Pub. L. 98-473 set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure) was repealed by Pub. L. 99-570, §1005(b)(1).

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1004(a) of Pub. L. 99-570 effective on date of taking effect of section 3583 of Title 18, Crimes and Criminal Procedure (Nov. 1, 1987), see section 1004(b) of Pub. L. 99-570 set out as a note under section 841 of this title.

#### EFFECTIVE DATE

Section effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91-513, set out as a note under section 801 of this title.

### § 860. Distribution or manufacturing in or near schools and colleges

#### (a) Penalty

Any person who violates section 841(a)(1) of this title or section 856 of this title by distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within one thousand feet of, the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or a playground, or housing facility owned by a public housing authority, or within 100 feet of a public or private youth center, public swimming pool, or video arcade facility, is (except as provided in subsection (b)) subject to (1) twice the maximum punishment authorized by section 841(b) of this title; and (2) at least twice any term of supervised release authorized by section 841(b) of this title for a first offense. A fine up to twice that authorized by section 841(b) of this title may be imposed in addition to any term of imprisonment authorized by this subsection. Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a person shall be sentenced under this subsection to a term of imprisonment of not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana.

#### (b) Second offenders

Any person who violates section 841(a)(1) of this title or section 856 of this title by distribut-

ing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within one thousand feet of, the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or a playground, or housing facility owned by a public housing authority, or within 100 feet of a public or private youth center, public swimming pool, or video arcade facility, after a prior conviction under subsection (a) has become final is punishable (1) by the greater of (A) a term of imprisonment of not less than three years and not more than life imprisonment or (B) three times the maximum punishment authorized by section 841(b) of this title for a first offense, and (2) at least three times any term of supervised release authorized by section 841(b) of this title for a first offense. A fine up to three times that authorized by section 841(b) of this title may be imposed in addition to any term of imprisonment authorized by this subsection. Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a person shall be sentenced under this subsection to a term of imprisonment of not less than three years. Penalties for third and subsequent convictions shall be governed by section 841(b)(1)(A) of this title.

#### (c) Employing children to distribute drugs near schools or playgrounds

Notwithstanding any other law, any person at least 21 years of age who knowingly and intentionally—

(1) employs, hires, uses, persuades, induces, entices, or coerces a person under 18 years of age to violate this section; or

(2) employs, hires, uses, persuades, induces, entices, or coerces a person under 18 years of age to assist in avoiding detection or apprehension for any offense under this section by any Federal, State, or local law enforcement official,

is punishable by a term of imprisonment, a fine, or both, up to triple those authorized by section 841 of this title.

#### (d) Suspension of sentence; probation; parole

In the case of any mandatory minimum sentence imposed under this section, imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under this section shall not be eligible for parole until the individual has served the mandatory minimum term of imprisonment as provided by this section.

#### (e) Definitions

For the purposes of this section—

(1) The term “playground” means any outdoor facility (including any parking lot appurtenant thereto) intended for recreation, open to the public, and with any portion thereof containing three or more separate apparatus intended for the recreation of children including, but not limited to, sliding boards, swings, and teeterboards.

(2) The term “youth center” means any recreational facility and/or gymnasium (including any parking lot appurtenant thereto), intended primarily for use by persons under 18

years of age, which regularly provides athletic, civic, or cultural activities.

(3) The term "video arcade facility" means any facility, legally accessible to persons under 18 years of age, intended primarily for the use of pinball and video machines for amusement containing a minimum of ten pinball and/or video machines.

(4) The term "swimming pool" includes any parking lot appurtenant thereto.

(Pub. L. 91-513, title II, § 419, formerly § 405A, as added Pub. L. 98-473, title II, § 503(a), Oct. 12, 1984, 98 Stat. 2069; amended Pub. L. 99-570, title I, §§ 1004(a), 1104, 1105(c), 1841(b), 1866(b), (c), Oct. 27, 1986, 100 Stat. 3207-6, 3207-11, 3207-52, 3207-55; Pub. L. 99-646, § 28, Nov. 10, 1986, 100 Stat. 3598; Pub. L. 100-690, title VI, §§ 6452(b)(1), 6457, 6458, Nov. 18, 1988, 102 Stat. 4371, 4373; renumbered § 419 and amended Pub. L. 101-647, title X, §§ 1002(b), 1003(b), title XII, § 1214, title XV, § 1502, title XXXV, § 3599L, Nov. 29, 1990, 104 Stat. 4827, 4829, 4833, 4836, 4932; Pub. L. 103-322, title XIV, § 140006, title XXXII, § 320107, title XXXIII, § 330009(a), Sept. 13, 1994, 108 Stat. 2032, 2111, 2143.)

#### CODIFICATION

Section was classified to section 845a of this title prior to renumbering by Pub. L. 101-647.

#### AMENDMENTS

1994—Subsec. (a). Pub. L. 103-322, § 320107, substituted "playground, or housing facility owned by a public housing authority, or within" for "playground, or within".

Subsec. (b). Pub. L. 103-322, §§ 320107, 330009(a), substituted "playground, or housing facility owned by a public housing authority, or within" for "playground, or within" and inserted a period at end of penultimate sentence.

Subsecs. (c) to (e). Pub. L. 103-322, § 140006, added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1990—Subsec. (a). Pub. L. 101-647, § 1502(1), inserted "or a playground," after "university," and struck out "playground," after "within 100 feet of a".

Pub. L. 101-647, § 1214(1)(C), substituted "a person shall be sentenced under this subsection to a term of imprisonment of not less than one year" for "a term of imprisonment under this subsection shall be not less than one year".

Pub. L. 101-647, § 1214(1)(B), inserted "A fine up to twice that authorized by section 841(b) of this title may be imposed in addition to any term of imprisonment authorized by this subsection."

Pub. L. 101-647, § 1214(1)(A), which directed the amendment of par. (1) by striking out "or a fine, or both," could not be executed because those words did not appear. See note below.

Pub. L. 101-647, § 1003(b)(1), which directed the substitution of "subject to (1) twice the maximum punishment authorized by section 841(b) of this title" for "punishable (1) by a term of imprisonment, or a fine, or both, up to twice that authorized by section 841(b) of this title", was executed by making the substitution for "punishable (1) by a term of imprisonment, or fine, or both, up to twice that authorized by section 841(b) of this title" to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 101-647, § 3599L, substituted "has become final" for "have become final".

Pub. L. 101-647, § 1502(2), inserted "or a playground," after "university," and struck out "playground," after "within 100 feet of a".

Pub. L. 101-647, § 1214(2)(B), inserted after first sentence "A fine up to three times that authorized by section 841(b) of this title may be imposed in addition to

any term of imprisonment authorized by this subsection. Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a person shall be sentenced under this subsection to a term of imprisonment of not less than three years".

Subsec. (b)(1)(B). Pub. L. 101-647, § 1214(2)(A), which directed the amendment of subpar. (B) by striking "or a fine up to three times that" through "or both", could not be executed because the language did not appear after execution of the intervening amendment by Pub. L. 101-647, § 1003(b)(2). See below.

Pub. L. 101-647, § 1003(b)(2), substituted "three times the maximum punishment authorized by section 841(b) of this title for a first offense" for "a term of imprisonment of up to three times that authorized by section 841(b) of this title for a first offense, or a fine up to three times that authorized by section 841(b) of this title for a first offense, or both".

Subsec. (c). Pub. L. 101-647, § 1214(3), inserted "mandatory minimum" after "In the case of any", struck out "subsection (b)" after "imposed under", struck out "of" before "this section" in a reference to "of this section" which was editorially added before "imposition or", and substituted "An individual convicted under this section shall not be eligible for parole until the individual has served the mandatory minimum term of imprisonment as provided by this section" for "An individual convicted under subsection (b) of this section shall not be eligible for parole under chapter 311 of title 18 until the individual has served the minimum sentence required by such subsection".

1988—Subsec. (a). Pub. L. 100-690, §§ 6457, 6458(a), inserted "possessing with intent to distribute," after "distributing" and "or within 100 feet of a playground, public or private youth center, public swimming pool, or video arcade facility," after "university".

Subsec. (b). Pub. L. 100-690, §§ 6452(b)(1), 6457, 6458(a), inserted "possessing with intent to distribute," after "distributing", and "or within 100 feet of a playground, public or private youth center, public swimming pool, or video arcade facility," after "university", substituted "a prior conviction" for "a prior conviction or convictions", and inserted at end "Penalties for third and subsequent convictions shall be governed by section 841(b)(1)(A) of this title."

Subsec. (d). Pub. L. 100-690, § 6458(b), added subsec. (d).

1986—Subsec. (a). Pub. L. 99-570, §§ 1104(a), (b), 1105(c), 1841(b)(1), inserted "or section 856 of this title" and "or manufacturing", substituted "a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university" for "a public or private elementary or secondary school", struck out "involving the same controlled substance and schedule" after "for a first offense", and inserted "Except to the extent a greater minimum sentence is otherwise provided by section 841(b) of this title, a term of imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana."

Pub. L. 99-570, § 1004(a), substituted "term of supervised release" for "special parole term".

Subsec. (b). Pub. L. 99-646 which directed that "parole" be inserted after "(2) at least three times any special" could not be executed in view of prior amendment by Pub. L. 99-570, § 1104(c) below.

Pub. L. 99-570, § 1866(b), which directed that "term of supervised release" be substituted for "special term" could not be executed in view of prior amendment by Pub. L. 99-570, § 1104(c) below.

Pub. L. 99-570, §§ 1104(a), 1841(b)(2), inserted reference to section 856 of this title, inserted "or manufacturing" after "distributing" and substituted "a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university" for "a public or private elementary or secondary school".

Pub. L. 99-570, § 1104(c), amended cls. (1) and (2) generally. Prior to amendment, cls. (1) and (2) read as fol-

lows: “(1) by a term of imprisonment of not less than three years and not more than life imprisonment and (2) at least three times any special term authorized by section 841(b) of this title for a second or subsequent offense involving the same controlled substance and schedule.”

Subsec. (c). Pub. L. 99-570, §1866(c), substituted reference to chapter 311 of title 18 for reference to section 4202 of that title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1004(a) of Pub. L. 99-570 effective on date of taking effect of section 3583 of Title 18, Crimes and Criminal Procedure (Nov. 1, 1987), see section 1004(b) of Pub. L. 99-570 set out as a note under section 841 of this title.

### **§ 860a. Consecutive sentence for manufacturing or distributing, or possessing with intent to manufacture or distribute, methamphetamine on premises where children are present or reside**

Whoever violates section 841(a)(1) of this title by manufacturing or distributing, or possessing with intent to manufacture or distribute, methamphetamine or its salts, isomers or salts of isomers on premises in which an individual who is under the age of 18 years is present or resides, shall, in addition to any other sentence imposed, be imprisoned for a period of any term of years but not more than 20 years, subject to a fine, or both.

(Pub. L. 91-513, title II, §419a, as added Pub. L. 109-177, title VII, §734(a), Mar. 9, 2006, 120 Stat. 270.)

### **§ 861. Employment or use of persons under 18 years of age in drug operations**

#### **(a) Unlawful acts**

It shall be unlawful for any person at least eighteen years of age to knowingly and intentionally—

(1) employ, hire, use, persuade, induce, entice, or coerce, a person under eighteen years of age to violate any provision of this subchapter or subchapter II;

(2) employ, hire, use, persuade, induce, entice, or coerce, a person under eighteen years of age to assist in avoiding detection or apprehension for any offense of this subchapter or subchapter II by any Federal, State, or local law enforcement official; or

(3) receive a controlled substance from a person under 18 years of age, other than an immediate family member, in violation of this subchapter or subchapter II.

#### **(b) Penalty for first offense**

Any person who violates subsection (a) is subject to twice the maximum punishment otherwise authorized and at least twice any term of supervised release otherwise authorized for a first offense. Except to the extent a greater minimum sentence is otherwise provided, a term of imprisonment under this subsection shall not be less than one year.

#### **(c) Penalty for subsequent offenses**

Any person who violates subsection (a) after a prior conviction under subsection (a) of this section has become final, is subject to three times the maximum punishment otherwise authorized

and at least three times any term of supervised release otherwise authorized for a first offense. Except to the extent a greater minimum sentence is otherwise provided, a term of imprisonment under this subsection shall not be less than one year. Penalties for third and subsequent convictions shall be governed by section 841(b)(1)(A) of this title.

#### **(d) Penalty for providing or distributing controlled substance to underage person**

Any person who violates subsection (a)(1) or (2)<sup>1</sup>

(1) by knowingly providing or distributing a controlled substance or a controlled substance analogue to any person under eighteen years of age; or

(2) if the person employed, hired, or used is fourteen years of age or younger,

shall be subject to a term of imprisonment for not more than five years or a fine of not more than \$50,000, or both, in addition to any other punishment authorized by this section.

#### **(e) Suspension of sentence; probation; parole**

In any case of any sentence imposed under this section, imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under this section of an offense for which a mandatory minimum term of imprisonment is applicable shall not be eligible for parole under section 4202 of title 18<sup>2</sup> until the individual has served the mandatory term of imprisonment as enhanced by this section.

#### **(f) Distribution of controlled substance to pregnant individual**

Except as authorized by this subchapter, it shall be unlawful for any person to knowingly or intentionally provide or distribute any controlled substance to a pregnant individual in violation of any provision of this subchapter. Any person who violates this subsection shall be subject to the provisions of subsections (b), (c), and (e).

(Pub. L. 91-513, title II, §420, formerly §405B, as added Pub. L. 99-570, title I, §1102, Oct. 27, 1986, 100 Stat. 3207-10; amended Pub. L. 100-690, title VI, §§6452(b)(1), 6459, 6470(d), Nov. 18, 1988, 102 Stat. 4371, 4373, 4378; renumbered §420 and amended Pub. L. 101-647, title X, §§1002(c), 1003(c), title XXXV, §3599L, Nov. 29, 1990, 104 Stat. 4827, 4829, 4932.)

#### REFERENCES IN TEXT

Section 4202 of title 18, referred to in subsec. (e), which, as originally enacted in Title 18, Crimes and Criminal Procedure, related to eligibility of prisoners for parole, was repealed and a new section 4202 enacted as part of the repeal and enactment of a new chapter 311 (§4201 et seq.) of Title 18, by Pub. L. 94-233, §2, Mar. 15, 1976, 90 Stat. 219. For provisions relating to the eligibility of prisoners for parole, see section 4205 of Title 18. Pub. L. 98-473, title II, §§218(a)(5), 235(a)(1), (b)(1), Oct. 12, 1984, 98 Stat. 2027, 2031, 2032, as amended, provided that, effective on the first day of the first calendar month beginning 36 months after Oct. 12, 1984 (Nov. 1, 1987), chapter 311 of Title 18 is repealed, subject to remaining effective for five years after Nov. 1, 1987,

<sup>1</sup> So in original. Probably should be followed by a dash.

<sup>2</sup> See References in Text note below.

in certain circumstances. See Effective Date note set out under section 3551 of Title 18.

#### CODIFICATION

Section was classified to section 845b of this title prior to renumbering by Pub. L. 101-647.

#### AMENDMENTS

1990—Subsec. (b), Pub. L. 101-647, §1003(c)(1), which directed the substitution of “is subject to twice the maximum punishment otherwise authorized” for “is punishable by a term of imprisonment up to twice that authorized, or up to twice the fine authorized, or both,” was executed by making the substitution for “is punishable by a term of imprisonment up to twice that otherwise authorized, or up to twice the fine otherwise authorized, or both,” to reflect the probable intent of Congress.

Subsec. (c), Pub. L. 101-647, §3599L, substituted “has become final” for “have become final”.

Pub. L. 101-647, §1003(c)(2), which directed the substitution of “is subject to three times the maximum punishment otherwise authorized” for “is punishable by a term of imprisonment up to three times that authorized, or up to three times the fine authorized, or both,” was executed by making the substitution for “is punishable by a term of imprisonment up to three times that otherwise authorized, or up to three times the fine otherwise authorized, or both,” to reflect the probable intent of Congress.

1988—Subsec. (a)(3), Pub. L. 100-690, §6459, added par. (3).

Subsec. (c), Pub. L. 100-690, §6452(b)(1), struck out “or convictions” after “a prior conviction” and inserted at end “Penalties for third and subsequent convictions shall be governed by section 841(b)(1)(A) of this title.”

Subsec. (e), Pub. L. 100-690, §6470(d), struck out “required by section 841(b) of this title” after “mandatory term of imprisonment”.

### § 862. Denial of Federal benefits to drug traffickers and possessors

#### (a) Drug traffickers

(1) Any individual who is convicted of any Federal or State offense consisting of the distribution of controlled substances shall—

(A) at the discretion of the court, upon the first conviction for such an offense be ineligible for any or all Federal benefits for up to 5 years after such conviction;

(B) at the discretion of the court, upon a second conviction for such an offense be ineligible for any or all Federal benefits for up to 10 years after such conviction; and

(C) upon a third or subsequent conviction for such an offense be permanently ineligible for all Federal benefits.

(2) The benefits which are denied under this subsection shall not include benefits relating to long-term drug treatment programs for addiction for any person who, if there is a reasonable body of evidence to substantiate such declaration, declares himself to be an addict and submits himself to a long-term treatment program for addiction, or is deemed to be rehabilitated pursuant to rules established by the Secretary of Health and Human Services.

#### (b) Drug possessors

(1) Any individual who is convicted of any Federal or State offense involving the possession of a controlled substance (as such term is defined for purposes of this subchapter) shall—

(A) upon the first conviction for such an offense and at the discretion of the court—

(i) be ineligible for any or all Federal benefits for up to one year;

(ii) be required to successfully complete an approved drug treatment program which includes periodic testing to insure that the individual remains drug free;

(iii) be required to perform appropriate community service; or

(iv) any combination of clause (i), (ii), or (iii); and

(B) upon a second or subsequent conviction for such an offense be ineligible for all Federal benefits for up to 5 years after such conviction as determined by the court. The court shall continue to have the discretion in subparagraph (A) above. In imposing penalties and conditions under subparagraph (A), the court may require that the completion of the conditions imposed by clause (ii) or (iii) be a requirement for the reinstatement of benefits under clause (i).

(2) The penalties and conditions which may be imposed under this subsection shall be waived in the case of a person who, if there is a reasonable body of evidence to substantiate such declaration, declares himself to be an addict and submits himself to a long-term treatment program for addiction, or is deemed to be rehabilitated pursuant to rules established by the Secretary of Health and Human Services.

#### (c) Suspension of period of ineligibility

The period of ineligibility referred to in subsections (a) and (b) shall be suspended if the individual—

(A) completes a supervised drug rehabilitation program after becoming ineligible under this section;

(B) has otherwise been rehabilitated; or

(C) has made a good faith effort to gain admission to a supervised drug rehabilitation program, but is unable to do so because of inaccessibility or unavailability of such a program, or the inability of the individual to pay for such a program.

#### (d) Definitions

As used in this section—

(1) the term “Federal benefit”—

(A) means the issuance of any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

(B) does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility; and

(2) the term “veterans benefit” means all benefits provided to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States.

#### (e) Inapplicability of this section to Government witnesses

The penalties provided by this section shall not apply to any individual who cooperates or testifies with the Government in the prosecution of a Federal or State offense or who is in a Government witness protection program.

**(f) Indian provision**

Nothing in this section shall be construed to affect the obligation of the United States to any Indian or Indian tribe arising out of any treaty, statute, Executive order, or the trust responsibility of the United States owing to such Indian or Indian tribe. Nothing in this subsection shall exempt any individual Indian from the sanctions provided for in this section, provided that no individual Indian shall be denied any benefit under Federal Indian programs comparable to those described in subsection (d)(1)(B) or (d)(2).

**(g) Presidential report**

(1) On or before May 1, 1989, the President shall transmit to the Congress a report—

(A) delineating the role of State courts in implementing this section;

(B) describing the manner in which Federal agencies will implement and enforce the requirements of this section;

(C) detailing the means by which Federal and State agencies, courts, and law enforcement agencies will exchange and share the data and information necessary to implement and enforce the withholding of Federal benefits; and

(D) recommending any modifications to improve the administration of this section or otherwise achieve the goal of discouraging the trafficking and possession of controlled substances.

(2) No later than September 1, 1989, the Congress shall consider the report of the President and enact such changes as it deems appropriate to further the goals of this section.

**(h) Effective date**

The denial of Federal benefits set forth in this section shall take effect for convictions occurring after September 1, 1989.

(Pub. L. 91-513, title II, § 421, formerly Pub. L. 100-690, title V, § 5301, Nov. 18, 1988, 102 Stat. 4310; renumbered § 421 of Pub. L. 91-513 and amended Pub. L. 101-647, title X, § 1002(d), Nov. 29, 1990, 104 Stat. 4827.)

**CODIFICATION**

Section was classified to section 853a of this title prior to renumbering by Pub. L. 101-647.

**AMENDMENTS**

1990—Pub. L. 101-647, § 1002(d)(1), renumbered section 853a of this title as this section.

Subsec. (a)(1). Pub. L. 101-647, § 1002(d)(2), struck out “(as such terms are defined for purposes of the Controlled Substances Act)” after “controlled substances” in introductory provisions.

**§ 862a. Denial of assistance and benefits for certain drug-related convictions****(a) In general**

An individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance (as defined in section 802(6) of this title) shall not be eligible for—

(1) assistance under any State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.], or

(2) benefits under the supplemental nutrition assistance program (as defined in section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012)) or any State program carried out under that Act [7 U.S.C. 2011 et seq.].

**(b) Effects on assistance and benefits for others****(1) Program of temporary assistance for needy families**

The amount of assistance otherwise required to be provided under a State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] to the family members of an individual to whom subsection (a) applies shall be reduced by the amount which would have otherwise been made available to the individual under such part.

**(2) Benefits under the Food and Nutrition Act of 2008**

The amount of benefits otherwise required to be provided to a household under the supplemental nutrition assistance program (as defined in section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012)), or any State program carried out under that Act [7 U.S.C. 2011 et seq.], shall be determined by considering the individual to whom subsection (a) applies not to be a member of such household, except that the income and resources of the individual shall be considered to be income and resources of the household.

**(c) Enforcement**

A State that has not exercised its authority under subsection (d)(1)(A) shall require each individual applying for assistance or benefits referred to in subsection (a), during the application process, to state, in writing, whether the individual, or any member of the household of the individual, has been convicted of a crime described in subsection (a).

**(d) Limitations****(1) State elections****(A) Opt out**

A State may, by specific reference in a law enacted after August 22, 1996, exempt any or all individuals domiciled in the State from the application of subsection (a).

**(B) Limit period of prohibition**

A State may, by law enacted after August 22, 1996, limit the period for which subsection (a) shall apply to any or all individuals domiciled in the State.

**(2) Inapplicability to convictions occurring on or before August 22, 1996**

Subsection (a) shall not apply to a conviction if the conviction is for conduct occurring on or before August 22, 1996.

**(e) “State” defined**

For purposes of this section, the term “State” has the meaning given it—

(1) in section 419(5) of the Social Security Act [42 U.S.C. 619(5)], when referring to assistance provided under a State program funded under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.], and

(2) in section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), when referring to the

supplemental nutrition assistance program (as defined in that section) or any State program carried out under that Act [7 U.S.C. 2011 et seq.].

**(f) Rule of interpretation**

Nothing in this section shall be construed to deny the following Federal benefits:

- (1) Emergency medical services under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].
- (2) Short-term, noncash, in-kind emergency disaster relief.
- (3)(A) Public health assistance for immunizations.
- (B) Public health assistance for testing and treatment of communicable diseases if the Secretary of Health and Human Services determines that it is necessary to prevent the spread of such disease.
- (4) Prenatal care.
- (5) Job training programs.
- (6) Drug treatment programs.

(Pub. L. 104-193, title I, §115, Aug. 22, 1996, 110 Stat. 2180; Pub. L. 105-33, title V, §5516(a), Aug. 5, 1997, 111 Stat. 620; Pub. L. 110-234, title IV, §4115(c)(2)(C), May 22, 2008, 122 Stat. 1109; Pub. L. 110-246, §4(a), title IV, §4115(c)(2)(C), June 18, 2008, 122 Stat. 1664, 1871; Pub. L. 113-79, title IV, §4030(n), Feb. 7, 2014, 128 Stat. 814.)

**REFERENCES IN TEXT**

The Social Security Act, referred to in subsecs. (a)(1), (b)(1), (e)(1), and (f)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. Title XIX of the Act is classified generally to subchapter XIX (§1396 et seq.) of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Food and Nutrition Act of 2008, referred to in subsecs. (a)(2), (b)(2), and (e)(2), is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

**CODIFICATION**

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

Section was enacted as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and not as part of the Controlled Substances Act which comprises this subchapter.

**AMENDMENTS**

2014—Subsec. (a)(2). Pub. L. 113-79, §4030(n)(1), substituted “supplemental nutrition assistance program (as defined in section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012)) or any State program carried out under that Act” for “food stamp program (as defined in section 3(l) of the Food Stamp Act of 1977) or any State program carried out under the Food Stamp Act of 1977”.

Subsec. (b)(2). Pub. L. 113-79, §4030(n)(2), substituted “supplemental nutrition assistance program (as defined in section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012)), or any State program carried out under that Act” for “food stamp program (as defined in section 3(l) of the Food Stamp Act of 1977), or any State program carried out under the Food Stamp Act of 1977”.

Subsec. (e)(2). Pub. L. 113-79, §4030(n)(3), substituted “section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), when referring to the supplemental nutrition assistance program (as defined in that section) or any State program carried out under that Act” for “section 3(s) of the Food Stamp Act of 1977, when referring to the food stamp program (as defined in section 3(l) of the Food Stamp Act of 1977) or any State program carried out under the Food Stamp Act of 1977”.

2008—Subsecs. (a)(2), (b)(2). Pub. L. 110-246, §4115(c)(2)(C)(i), substituted “section 3(l)” for “section 3(h)”.

Subsec. (e)(2). Pub. L. 110-246, §4115(c)(2)(C), substituted “section 3(s)” for “section 3(m)” and “section 3(l)” for “section 3(h)”.

1997—Subsec. (d)(2). Pub. L. 105-33 substituted “a conviction if the conviction is for conduct” for “convictions”.

**CHANGE OF NAME**

References to the food stamp program established under the Food Stamp Act of 1977, now known as the Food and Nutrition Act of 2008, considered to refer to the supplemental nutrition assistance program established under that Act, see section 4002(c) of Pub. L. 110-246, set out as a note under section 2012 of Title 7, Agriculture.

**EFFECTIVE DATE OF 2008 AMENDMENT**

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4115(c)(2)(C) of Pub. L. 110-246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110-246, set out as a note under section 1161 of Title 2, The Congress.

**EFFECTIVE DATE OF 1997 AMENDMENT**

Pub. L. 105-33, title V, §5518(d), Aug. 5, 1997, 111 Stat. 621, provided that: “The amendments made by this chapter to a provision of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104-193] that have not become part of another statute [chapter 1 (§§5501-5518) of subtitle F of title V of Pub. L. 105-33, amending this section, sections 601 to 603, 604 to 608, 609 to 611, and 612 to 617 of Title 42, The Public Health and Welfare, and provisions set out as notes under section 612c of Title 7, Agriculture, and sections 601 and 613 of Title 42] shall take effect as if the amendments had been included in the provision at the time the provision became law.”

**EFFECTIVE DATE**

Section effective July 1, 1997, with transition rules relating to State options to accelerate such date, rules relating to claims, actions, and proceedings commenced before such date, rules relating to closing out of accounts for terminated or substantially modified programs and continuance in office of Assistant Secretary for Family Support, and provisions relating to termination of entitlement under AFDC program, see section 116 of Pub. L. 104-193, as amended, set out as an Effective Date note under section 601 of Title 42, The Public Health and Welfare.

**§862b. Sanctioning for testing positive for controlled substances**

Notwithstanding any other provision of law, States shall not be prohibited by the Federal Government from testing welfare recipients for use of controlled substances nor from sanctioning welfare recipients who test positive for use of controlled substances.

(Pub. L. 104-193, title IX, §902, Aug. 22, 1996, 110 Stat. 2347.)

## CODIFICATION

Section was enacted as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and not as part of the Controlled Substances Act which comprises this subchapter.

**§ 863. Drug paraphernalia****(a) In general**

It is unlawful for any person—

- (1) to sell or offer for sale drug paraphernalia;
- (2) to use the mails or any other facility of interstate commerce to transport drug paraphernalia; or
- (3) to import or export drug paraphernalia.

**(b) Penalties**

Anyone convicted of an offense under subsection (a) of this section shall be imprisoned for not more than three years and fined under title 18.

**(c) Seizure and forfeiture**

Any drug paraphernalia involved in any violation of subsection (a) of this section shall be subject to seizure and forfeiture upon the conviction of a person for such violation. Any such paraphernalia shall be delivered to the Administrator of General Services, General Services Administration, who may order such paraphernalia destroyed or may authorize its use for law enforcement or educational purposes by Federal, State, or local authorities.

**(d) “Drug paraphernalia” defined**

The term “drug paraphernalia” means any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under this subchapter. It includes items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana,<sup>1</sup> cocaine, hashish, hashish oil, PCP, methamphetamine, or amphetamines into the human body, such as—

- (1) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- (2) water pipes;
- (3) carburetion tubes and devices;
- (4) smoking and carburetion masks;
- (5) roach clips: meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;
- (6) miniature spoons with level capacities of one-tenth cubic centimeter or less;
- (7) chamber pipes;
- (8) carburetor pipes;
- (9) electric pipes;
- (10) air-driven pipes;
- (11) chillums;
- (12) bongs;
- (13) ice pipes or chillers;
- (14) wired cigarette papers; or

- (15) cocaine freebase kits.

**(e) Matters considered in determination of what constitutes drug paraphernalia**

In determining whether an item constitutes drug paraphernalia, in addition to all other logically relevant factors, the following may be considered:

- (1) instructions, oral or written, provided with the item concerning its use;
- (2) descriptive materials accompanying the item which explain or depict its use;
- (3) national and local advertising concerning its use;
- (4) the manner in which the item is displayed for sale;
- (5) whether the owner, or anyone in control of the item, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
- (6) direct or circumstantial evidence of the ratio of sales of the item(s) to the total sales of the business enterprise;
- (7) the existence and scope of legitimate uses of the item in the community; and
- (8) expert testimony concerning its use.

**(f) Exemptions**

This section shall not apply to—

- (1) any person authorized by local, State, or Federal law to manufacture, possess, or distribute such items; or
- (2) any item that, in the normal lawful course of business, is imported, exported, transported, or sold through the mail or by any other means, and traditionally intended for use with tobacco products, including any pipe, paper, or accessory.

(Pub. L. 91-513, title II, § 422, as added and amended Pub. L. 101-647, title XXIV, § 2401(a)–(c), Nov. 29, 1990, 104 Stat. 4858, 4859; Pub. L. 106-310, div. B, title XXXVI, § 3614, Oct. 17, 2000, 114 Stat. 1230.)

## CODIFICATION

The text of section 857(b) to (f) of this title, which was transferred to subsecs. (b) to (f) of this section by Pub. L. 101-647, § 2401(b), was based on Pub. L. 99-570, title I, § 1822(b)–(f), Oct. 27, 1986, 100 Stat. 3207-51; Pub. L. 100-690, title VI, § 6485, Nov. 18, 1988, 102 Stat. 4384.

## AMENDMENTS

2000—Subsec. (d). Pub. L. 106-310 inserted “methamphetamine,” after “PCP,” in introductory provisions.

1990—Subsec. (b). Pub. L. 101-647, § 2401(c)(1), substituted “fined under title 18” for “fined not more than \$100,000”.

Pub. L. 101-647, § 2401(b), redesignated subsec. (b) of section 857 of this title as subsec. (b) of this section. See Codification note above.

Subsecs. (c) to (e). Pub. L. 101-647, § 2401(b), redesignated subsecs. (c) to (e) of section 857 of this title as subsecs. (c) to (e) of this section. See Codification note above.

Subsec. (f). Pub. L. 101-647, § 2401(c)(2), made technical amendment to reference to “This section” to correct reference to corresponding provision of original act.

Pub. L. 101-647, § 2401(b), redesignated subsec. (f) of section 857 of this title as subsec. (f) of this section. See Codification note above.

**§ 864. Anhydrous ammonia**

- (a) It is unlawful for any person—

<sup>1</sup> So in original. Probably should be “marihuana,”.



- (1) to steal anhydrous ammonia, or
- (2) to transport stolen anhydrous ammonia across State lines,

knowing, intending, or having reasonable cause to believe that such anhydrous ammonia will be used to manufacture a controlled substance in violation of this part.

(b) Any person who violates subsection (a) shall be imprisoned or fined, or both, in accordance with section 843(d) of this title as if such violation were a violation of a provision of section 843 of this title.

(Pub. L. 91-513, title II, §423, as added Pub. L. 106-310, div. B, title XXXVI, §3653(a), Oct. 17, 2000, 114 Stat. 1240.)

**§ 864a. Grants to reduce production of methamphetamines from anhydrous ammonia**

**(a) Definitions**

In this section:

**(1) Eligible entity**

The term “eligible entity” means—

(A) a producer of agricultural commodities;

(B) a cooperative association, a majority of the members of which produce or process agricultural commodities; or

(C) a person in the trade or business of—

(i) selling an agricultural product (including an agricultural chemical) at retail, predominantly to farmers and ranchers; or

(ii) aerial and ground application of an agricultural chemical.

**(2) Nurse tank**

The term “nurse tank” shall be considered to be a cargo tank (within the meaning of section 173.315(m) of title 49, Code of Federal Regulations, as in effect as of the date of the enactment of this Act).

**(b) Grant authority**

The Secretary may make a grant to an eligible entity to enable the eligible entity to obtain and add to an anhydrous ammonia fertilizer nurse tank a physical lock or a substance to reduce the amount of methamphetamine that can be produced from any anhydrous ammonia removed from the nurse tank.

**(c) Grant amount**

The amount of a grant made under this section to an eligible entity shall be the product obtained by multiplying—

(1) an amount not less than \$40 and not more than \$60, as determined by the Secretary; and

(2) the number of fertilizer nurse tanks of the eligible entity.

**(d) Authorization of appropriations**

There is authorized to be appropriated to the Secretary to make grants under this section \$15,000,000 for the period of fiscal years 2008 through 2012.

(Pub. L. 110-234, title XIV, §14203, May 22, 2008, 122 Stat. 1458; Pub. L. 110-246, §4(a), title XIV, §14203, June 18, 2008, 122 Stat. 1664, 2220.)

REFERENCES IN TEXT

The date of the enactment of this Act, referred to in subsec. (a)(2), is the date of enactment of Pub. L. 110-246, which was approved June 18, 2008.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

Section was enacted as part of the Food, Conservation, and Energy Act of 2008, and not as part of the Controlled Substances Act which comprises this subchapter.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as a note under section 8701 of Title 7, Agriculture.

DEFINITION OF “SECRETARY”

“Secretary” as meaning the Secretary of Agriculture, see section 8701 of Title 7, Agriculture.

**§ 865. Smuggling methamphetamine or methamphetamine precursor chemicals into the United States while using facilitated entry programs**

**(a) Enhanced prison sentence**

The sentence of imprisonment imposed on a person convicted of an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), involving methamphetamine or any listed chemical that is defined in section 102(33) of the Controlled Substances Act (21 U.S.C. 802(33)),<sup>1</sup> shall, if the offense is committed under the circumstance described in subsection (b), be increased by a consecutive term of imprisonment of not more than 15 years.

**(b) Circumstances**

For purposes of subsection (a), the circumstance described in this subsection is that the offense described in subsection (a) was committed by a person who—

(1) was enrolled in, or who was acting on behalf of any person or entity enrolled in, any dedicated commuter lane, alternative or accelerated inspection system, or other facilitated entry program administered or approved by the Federal Government for use in entering the United States; and

(2) committed the offense while entering the United States, using such lane, system, or program.

**(c) Permanent ineligibility**

Any person whose term of imprisonment is increased under subsection (a) shall be permanently and irrevocably barred from being eligible for or using any lane, system, or program described in subsection (b)(1).

(Pub. L. 109-177, title VII, §731, Mar. 9, 2006, 120 Stat. 270.)

REFERENCES IN TEXT

The Controlled Substances Act, referred to in subsec. (a), is title II of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

<sup>1</sup> So in original. A second closing parenthesis probably should precede the comma.

The Controlled Substances Import and Export Act, referred to in subsec. (a), is title III of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1285, as amended, which is classified principally to subchapter II (§951 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 951 of this title and Tables.

#### CODIFICATION

Section was enacted as part of the USA PATRIOT Improvement and Reauthorization Act of 2005 and also as part of the Combat Methamphetamine Epidemic Act of 2005, and not as part of the Controlled Substances Act which comprises this subchapter.

#### PART E—ADMINISTRATIVE AND ENFORCEMENT PROVISIONS

### § 871. Attorney General

#### (a) Delegation of functions

The Attorney General may delegate any of his functions under this subchapter to any officer or employee of the Department of Justice.

#### (b) Rules and regulations

The Attorney General may promulgate and enforce any rules, regulations, and procedures which he may deem necessary and appropriate for the efficient execution of his functions under this subchapter.

#### (c) Acceptance of devises, bequests, gifts, and donations

The Attorney General may accept in the name of the Department of Justice any form of devise, bequest, gift, or donation where the donor intends to donate property for the purpose of preventing or controlling the abuse of controlled substances. He may take all appropriate steps to secure possession of such property and may sell, assign, transfer, or convey any such property other than moneys.

(Pub. L. 91-513, title II, §501, Oct. 27, 1970, 84 Stat. 1270.)

#### REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a) and (b), was in the original “this title”, meaning title II of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1242, as amended, and is popularly known as the “Controlled Substances Act”. For complete classification of title II to the Code, see second paragraph of Short Title note set out under section 801 of this title and Tables.

### § 871a. Semiannual reports to Congress

#### (a) In general

The Attorney General shall, on a semiannual basis, submit to the congressional committees and organizations specified in subsection (b) reports that—

(1) describe the allocation of the resources of the Drug Enforcement Administration and the Federal Bureau of Investigation for the investigation and prosecution of alleged violations of the Controlled Substances Act [21 U.S.C. 801 et seq.] involving methamphetamine; and

(2) the measures being taken to give priority in the allocation of such resources to such violations involving—

(A) persons alleged to have imported into the United States substantial quantities of methamphetamine or scheduled listed

chemicals (as defined pursuant to the amendment made by section 711(a)(1));<sup>1</sup>

(B) persons alleged to have manufactured methamphetamine; and

(C) circumstances in which the violations have endangered children.

#### (b) Congressional committees

The congressional committees and organizations referred to in subsection (a) are—

(1) in the House of Representatives, the Committee on the Judiciary, the Committee on Energy and Commerce, and the Committee on Government Reform; and

(2) in the Senate, the Committee on the Judiciary, the Committee on Commerce, Science, and Transportation, and the Caucus on International Narcotics Control.

(Pub. L. 109-177, title VII, §736, Mar. 9, 2006, 120 Stat. 271.)

#### REFERENCES IN TEXT

The Controlled Substances Act, referred to in subsec. (a)(1), is title II of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 801 of this title and Tables.

Section 711(a)(1), referred to in subsec. (a)(2)(A), is section 711(a)(1) of Pub. L. 109-177, which amended section 802 of this title.

#### CODIFICATION

Section was enacted as part of the USA PATRIOT Improvement and Reauthorization Act of 2005 and also as part of the Combat Methamphetamine Epidemic Act of 2005, and not as part of the Controlled Substances Act which comprises this subchapter.

#### CHANGE OF NAME

Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

### § 872. Education and research programs of Attorney General

#### (a) Authorization

The Attorney General is authorized to carry out educational and research programs directly related to enforcement of the laws under his jurisdiction concerning drugs or other substances which are or may be subject to control under this subchapter. Such programs may include—

(1) educational and training programs on drug abuse and controlled substances law enforcement for local, State, tribal, and Federal personnel;

(2) studies or special projects designed to compare the deterrent effects of various enforcement strategies on drug use and abuse;

(3) studies or special projects designed to assess and detect accurately the presence in the human body of drugs or other substances which are or may be subject to control under this subchapter, including the development of rapid field identification methods which would enable agents to detect microquantities of such drugs or other substances;

<sup>1</sup> See References in Text note below.